IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.10.2024

CORAM :

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM
AND
THE HON'BLE MR.JUSTICE V.SIVAGNANAM

H.C.P.No.1740 of 2024

Prashika
W/o Arulanantharajan @ Arul .. Petitioner

v.

1. Joint Secretary (COFEPOSA)
Government of India, Ministry of Finance
Department of Revenue
Central Economic Intelligence Bureau (CEIB)
6th Floor, 'B' Wing, Janpath Bhawan
Janpath, New Delhi 110 001

2. Union of India rep by
Director General
Central Economic Intelligence Bureau
Government of India, Ministry of Finance
Department of Revenue
6th Floor, 'B' Wing, Janpath Bhawan
Janpath, New Delhi 110 001

3. Commissioner of Customs
Chennai-III, Customs House
Chennai 600 001

4. The Superintendent
   Central Prison-II, Puzhal
   Chennai 600 066

5. Directorate of Revenue Intelligence
   Chennai Zonal Unit
   represented by the Senior Intelligence Officer
   No.27, G.N.Chetty Road, T.Nagar
   Chennai 600 017
   (R5 impleaded vide order dated 30.08.2024
   in Crl.MP.12125/24 in HCP.1740/24) .. Respondents

Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Habeas Corpus, calling for the records pertaining to the detention order in F.No.PD-12001/08/2023-COFEPOSA dated 20.12.2023 passed by the 1st respondent, quashing the same and directing the respondents to produce the body of the detenu Arulanantharajan @ Arul S/o Jayarajan @ Shanmuga Pillai now detained in the Central Prison-I, Puzhal, Chennai as COFEPOSA detenu, before the Hon'ble Court and set him at liberty.

For Petitioner	::	Mr.R.Rajarathinam Senior Counsel for Mr.S.Ramachandran
For Respondents	::	Mr.A.Kumaraguru Senior Panel Counsel for R1 & R2 No appearance for R3 Mr.E.Raj Thilak Additional Public Prosecutor for R4 Mr.Sai Srujan Tayi Senior Standing Counsel for R5

ORDER

(Order of the Court was made by S.M.SUBRAMANIAM,J.)

The habeas corpus petition on hand has been instituted assailing the detention order dated 20th December, 2023 issued by the Joint Secretary to Government of India, Ministry of Finance, Department of Revenue, Central Economic Intelligence Unit, COFEPOSA Wing, New Delhi, the first respondent herein in proceedings bearing F.No.PD-12001/08/2023-COFEPOSA against the husband of the petitioner, in exercise of the powers under Section 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974, based on the ground case registered for the offence under Section 104(6) read with Section 135(1)(a) of the Customs Act against the detenu.

2. The learned Senior Counsel appearing on behalf of the petitioner would submit that there is no material available on record to establish the subjective satisfaction of the detaining authority for invoking the preventive detention law against the detenu. The detenu has no antecedents nor any criminal case has been registered or pending against him. In the absence of

any material, the impugned order has no legs to stand. With reference to the grounds, the learned Senior Counsel relied on the judgment of the Apex Court in the case of *A.Sowkath Ali v. Union of India and others, 2000 SCC (Crl.) 1304*, where the Apex Court relied on the previous judgment in the case of Ahamed *Nassar v. State of Tamil Nadu, 1999 SCC (Crl.) 1469,* wherein it is held as follows:-

> "20. So far as the stand of the respondent with reference to the advocate's letter dated 19.4.1999 is concerned it cannot be held to be a justifiable stand. These technical objections must be shunned where a detenu is being dealt with under the preventive detention law. A man is to be detained in the prison based on the subjective satisfaction of the detaining authority. Every conceivable material which is relevant and vital which may have a bearing on the issue should be placed before the detaining authority. The sponsoring authority should not keep it back, based on his interpretation that it would not be of any help to a prospective detenu. The decision is not to be made by the sponsoring authority. The law on this subject is well settled; a detention order vitiates

> if any relevant document is not placed before the detaining authority which reasonably could affect his decision."

Moreover, in respect of two other accused persons, the detention orders have been quashed by this Court vide orders dated 29.04.2024 & 30.04.2024 in H.C.P.Nos.473 & 421 of 2024 respectively. Therefore, the present petition is also to be considered.

3. Mr.A.Kumaraguru and Mr.Sai Srujan Tayi, learned Senior Standing Panel Counsels appearing on behalf of the Department would oppose the petition by stating that based on the confession statement of the co-accused, namely, Santhoshkumar, the detenu in 34 previous occasions is already involved in smuggling activities and therefore the authorities competent invoked the preventive detention law. The detenu is a habitual smuggler and having identified him as a habitual offender, the detaining authority has passed the detention order. Though the impugned detention order was issued on 20.12.2023, the detenu was arrested on 02.07.2024. The phone calls between the co-accused and the detenu are also relied upon by

the detaining authority. Since materials are available on record, the detaining authority subjectively satisfied and thus there is no infirmity and the habeas corpus petition is to be rejected.

4. We have considered the submissions made on behalf of the parties to the lis on hand. It is not in dispute that the detenu is not facing any previous criminal case. Based on the ground case alone, the impugned detention order has been issued in proceedings dated 20th December, 2023. However, the detenu has been arrested on 02.07.2024. The confession statement given by the co-accused, namely, Santhoshkumar, by itself, cannot be relied upon for the purpose of tagging the detenu in respect of the alleged offence. There must be clinching evidence to establish the link. In the absence of any material evidence to establish that the detenu is to be construed as a habitual smuggler, the detaining authority ought not to have invoked the preventive detention law. Instead they can proceed against the detenu in respect of the criminal case already registered.

5. Though the confession statement of an accused is admissible

against him under Section 108 of the Customs Act, it would be insufficient for the purpose of fixing another person as an accused in the criminal case in the absence of any further evidence.

6. Pertinently, the respondents are not able to produce any other clinching material available on record at this juncture apart from the confession statement of Mr.Santhoshkumar, co-accused in the criminal case. Therefore, the subjective satisfaction arrived at by the detaining authority would be insufficient for the purpose of invoking the preventive detention law against the detenu. However, the prosecution may establish their case before the Court concerned in the criminal case already registered against the detenu. The observations made in this order would not have any implication in respect of the prosecution case, which is to be proved before the jurisdictional Court on evidence. The Court dealing with the case must proceed uninfluenced by the observations made in this order. We are confining this order only in respect of the preventive detention order impugned herein which, in our opinion, would be not in accordance with the scope of the preventive detention law. Therefore, the impugned detention

order is quashed and the habeas corpus petition is allowed. The detenu, namely, Arulanantharajan @ Arul, S/o Jayarajan @ Shanmuga Pillai, aged about 38 years, now detained at Central Prison-I, Puzhal, Chennai, is directed to be set at liberty forthwith, unless his confinement is required in connection with any other case.

Index : yes (S.M.S.,J.) (V.S.G.,J.)
Neutral citation : yes/no 22.10.2024

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To

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   Central Economic Intelligence Bureau (CEIB)
   6th Floor, 'B' Wing, Janpath Bhawan
   Janpath, New Delhi 110 001

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   No.27, G.N.Chetty Road, T.Nagar
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6. The Public Prosecutor
   High Court, Madras

S.M.SUBRAMANIAM,J.

AND

V.SIVAGNANAM,J.

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