



HCP(MD)No.1478 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:11.01.2024

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

and

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

H.C.P(MD)No.1478 of 2023

Mariyammal

... Petitioner/mother of the detenu

Vs.

1.State of Tamil Nadu,
Rep. by its the Additional Chief Secretary to Government,
Home, Prohibition &
Excise Department,
Fort St. George,
Chennai – 600 009.

2.The District Collector and District Magistrate,
Thoothukudi District,
Thoothukudi.

3.The Superintendent of Prison,
Central Prison,
Palayamkottai.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, seeking for issuance of a Writ of Habeas Corpus calling for the records relating to the detention order passed by the second respondent in H.S.(MD) Confdl. No.94/2023, dated 27.07.2023 and quash the same and direct the respondents to produce the detenu Thiru.Muthuramkumar @ Thangam, Son of Ayyappanainar @



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Manikandan, Male aged 22, who is detained at Central Prison, Palayamkottai before this Hon'ble Court and set him at liberty.

For Petitioner : Mr.B.Ponkarthikeyan

For Respondents : Mr.S.Ravi,
Addl. Public Prosecutor

ORDER

(Order of the Court was made **by J.NISHA BANU, J.**)

This Habeas Corpus Petition has been filed by the petitioner to quash the Detention Order passed by the second respondent in H.S.(MD) Confdl. No.94/2023, dated 27.07.2023 and direct the respondents to produce the detenu Thiru.Muthuramkumar @ Thangam, Son of Ayyappanainar @ Manikandan, Male aged 22, who is detained at Central Prison, Palayamkottai before this Hon'ble Court and set him at liberty.

2. The impugned preventive detention order has been made under 'The Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Cyber law offenders, Drug-offenders, Forest-offenders, Goondas, Immoral traffic offenders, Sand-offenders, Sexual-offenders, Slum-grabbers and Video Pirates Act, 1982 (Tamil Nadu Act No.14 of



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1982)' [hereinafter 'Act 14 of 1982' for the sake of convenience and clarity] on the premise that the detenu is a 'Sexual Offender' within the meaning of Section 2(ggg) of Act 14 of 1982.

3. Though several grounds have been raised in the petition, the only ground urged by the learned counsel for the petitioner is that the subjective satisfaction arrived at by the detaining authority with regard to imminent possibility of being detenu enlarged on bail is flawed.

4. Elaborating this point, learned counsel drew our attention to a portion of paragraph 6 of the grounds of impugned Preventive Detention Order, which reads as follows:

'6.I am aware that the accused Muthuramkumar @ Thangam was arrested in the ground case on 10.07.2023 and produced before the Court of Judicial Magistrate No.I, Srivaikundam on the same day and forwarded to Judicial custody up to 24.07.2023 and he is lodged in Central Prison, Palayamkottai. Further his remand was extended up to 07.08.2023. I am also aware that accused Muthuramkumar @ Thangam has tried to file a bail petition in the ground case registered in Kurumbur Police Station 71/2023 u/s. 376 (2) (g) IPC @ 376 (2) (g), 114 IPC before the appropriate Court. In a



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similar case registered in Tiruchendur All Women Police Station Cr.No.9/2017 u/s. 448, 376, 511 IPC bail was granted to the accused Gowthu Mohaideen by the Principal Sessions Court Thoothukudi vide Cr.M.P. (MD)No.3226/2017 dated 26.10.2017. I infer that it is very likely of is coming out on bail in the above case by Muthuramkumar @ Thangam filing a bail petition before the appropriate Courts since bails are granted by Courts in such cases.....'

5. Adverting to the aforementioned portion of the impugned preventive detention order, learned counsel submitted that the ground case on the file of Kurumbur Police Station [Crime No.71 of 2023] is for alleged offences under Sections 376(2) (g) of I.P.C., which was subsequently altered into Sections 376(2) (g) and 114 IPC but for arriving at subjective satisfaction as regards imminent possibility of the detenu being enlarged on bail, the detaining authority has relied on Gowthu Mohaideen's case bail order dated 26.10.2017 on the file of Principal Sessions Court, Thoothukudi. Adverting to Gowthu Mohaideen's case which has been furnished to the detenu as part of the grounds booklet and the aforementioned portion of the grounds of impugned preventive detention order, learned counsel submitted that Gowthu Mohaideen's case is for 448, 376, 511 of IPC.



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6. Learned counsel submits that Section 511 I.P.C., deals with attempt to commit offences and while the ground case is for alleged offences under Sections 376(2) (g) IPC @ 376(2) (g) and 114 IPC, Gowthu Mohideen's case is for Sections 448, 376 r/w 511 IPC, the comparison is a flawed exercise, which lead to the subjective satisfaction of the detaining authority.

7. In reply, the learned Additional Public Prosecutor submitted that Section 376 IPC is the nucleus of two cases ie., ground case as well as Gowthu Mohaideen's case.

8. We have carefully considered the rival points.

9. We find that though the nucleus of the offence is Section 376 IPC, an attempt to commit Section 376 offence cannot be compared with alleged Section 376 offence for arriving at subjective satisfaction regarding discretionary relief of grant of bail. Therefore, we have no hesitation in sustaining the argument of the learned counsel for the petitioner that the subjective satisfaction exercise is flawed and therefore, the subjective satisfaction itself is impaired which in turn means that the impugned preventive detention order is vitiated.



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10. In view of the above, Impugned preventive detention order dated 27.07.2023 bearing reference H.S.(M) Confdl No.94/2023 made by the second respondent is set aside and the detenu Thiru.Muthuramkumar @ Thangam, son of Ayyappanainar @ Manikandan, aged 22 years, is directed to be set at liberty forthwith, if not required in connection with any other case / cases.

[J.N.B.,J.] & [K.K.R.K.,J.]

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Index :Yes/No

NCC :Yes/No

pm

To

- 1.The Additional Chief Secretary to Government,
State of Tamil Nadu, Home, Prohibition &
Excise Department, Fort St. George, Chennai – 600 009.
- 2.The District Collector and District Magistrate,
Thoothukudi District, Thoothukudi.
- 3.The Superintendent of Prison,
Central Prison, Palayamkottai.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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AND
K.K.RAMAKRISHNAN, J.

pm

ORDER MADE IN
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