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H.C.P.No.620 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.08.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

H.C.P.No.620 of 2023

Reeta Mary
W/o.Wesley

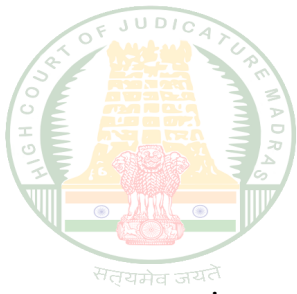
.. Petitioner

Vs.

1. State of Tamil Nadu
Rep. by the Additional Secretary,
Home, Prohibition and Excise Department
Fort St.George, Chennai-600 009.
2. The Commissioner of Police
Greater Chennai
Vepery, Chennai-600 007.
3. The Inspector of Police
Anti Vice Squad-1, Greater Chennai Police
Chennai.
4. The Superintendent of Prison
Central Prison-II
Puzhal, Chennai-600 066.

..Respondents

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Petition filed under Article 226 of the Constitution of India praying for issuance of a writ order or direction in the nature of WRIT OF HABEAS CORPUS, to call for the records relating to the detention order passed in Memo.NO.61/BCDFGISSSV/2023 dated 14.03.2023 passed by the 2nd respondent under the TamilNadu Act 14 of 1982 and set aside the same and direct the respondent to produce the petitioner's husband Thiru.Wesley @ Ranjith, S/o. Soundararaj, aged about 45 years the detenu, now confined in Central prison, Puzhal, Chennai before this Honble Court and set the petitioner's husband Thiru.Wesley @ Ranjith, S/o. Soundararaj, aged about 45 years the detenu herein at liberty.

For Petitioner : Mr.S.Senthilvel
representing Mr.G.Nirmal Krishnan
For Respondents : Mr.E.Raj Thilak
Additional Public Prosecutor

ORDER

[Order of the Court was made by M.SUNDAR, J.,]

When the captioned 'Habeas Corpus Petition' [hereinafter 'HCP' for the sake of convenience and clarity] was listed in the Admission Board on 19.04.2023, this Court made the following order:

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M.SUNDAR, J.,
and
M.NIRMAL KUMAR, J.,

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

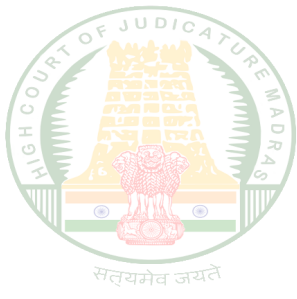
Captioned Habeas Corpus Petition has been filed in this Court on 13.04.2023 inter alia assailing a detention order dated 14.03.2023 bearing reference No.61/BCDFGISSSV/2023 made by 'second respondent' [hereinafter 'Detaining Authority' for the sake of convenience and clarity]. To be noted, third respondent is the Sponsoring Authority.

2. To be noted, wife of the detenu is the petitioner.

3. Mr.R.Muthukumar, learned counsel on record for habeas corpus petitioner is before us. Learned counsel for petitioner submits that ground case qua the detenu is for alleged offences under Sections 3(2)a, 4(1), 5(1)a, 6(1) and 7(1) of 'The Immoral Traffic (Prevention) Act, 1956' ['ITP Act' for the sake of brevity] in Crime No.04 of 2023 on the file of Greater Chennai Police, Anti Vice Squad-I, Chennai.

4. The aforementioned detention order has been made on the premise that the detenu is a 'Immoral Traffic Offender' under Section 2(g) of '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 1982)' [hereinafter 'Act 14 of 1982' for the sake of convenience and clarity].

5. The detention order has been assailed inter alia on the



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ground that there is no material in the booklet furnished to the detenu to show that the arrest was properly intimated to the relatives.

6. Prima facie case made out for admission. Admit. Issue Rule nisi returnable by four weeks.

7. Mr.R.Muniyapparaj, learned Additional Public Prosecutor, State of Tamil Nadu accepts notice for all respondents. List the captioned Habeas Corpus Petition accordingly.'

2. The aforementioned Admission Board order captures essentials that are imperative for appreciating this order and therefore, we are not setting out the same again. However, short forms, short references and abbreviations used in the Admission Board order will continue to be used in the instant order also for the sake of brevity, convenience and clarity.

3. Mr.S.Senthilvel, learned counsel representing the counsel on record for petitioner and Mr.E.Raj Thilak, learned State Additional Public Prosecutor for all respondents are before us.

4. As would be evident from paragraph No.5 of the aforementioned



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Admission Board order, at the time of admission, learned counsel had posited his legal challenge qua the impugned preventive detention order on the point that there is no material in the booklet furnished to the detenu to show that the arrest was properly intimated to the relatives but in the final hearing Board today, learned counsel for petitioner predicated his campaign against the impugned preventive detention order on the point that the subjective satisfaction arrived at by the Detaining Authority qua imminent possibility of the detenu being enlarged on bail is impaired. Elaborating on this submission, learned counsel drew our attention to one portion of paragraph No.4 of the grounds of impugned preventive detention order and the same reads as follows:

'4. In the ground case registered in Anti Vice Squad-I, Chennai Crime No.04/2023 u/s 3(2)a, 4(1), 5(1)a, 6(1) & 7(1) of ITP Act his co-accused was granted bail by the IV Metropolitan Magistrate, Saidapet, Chennai in Crl.MP No.2833/2023. Hence, I infer that it is very likely of his coming out on bail in Anti Vice Squad-I Cr.No.04/2023, since in similar cases bail is granted by the Court after lapse of time.....'

5. Adverting to the aforementioned portion of paragraph No.4 of



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grounds of impugned preventive detention order, learned counsel made two

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(i) As regards bail order of co-accused, the Detaining Authority has referred to CrI.M.P.No.2833 of 2023 though copy of this order has been furnished to the detenu, order in CrI.M.P.No.2859 of 2023 has also been furnished to the detenu. This is extraneous material and this has baffled the detenu causing infraction of his sacrosanct right to make an effective representation qua impugned preventive detention order;

(ii) As regards 'similar case', no details of similar case have been set out. In this regard, learned counsel pressed into service oft-quoted *Rekha's* case [*Rekha Vs. State of Tamil Nadu through Secretary to Government and another* reported in (2011) 5 SCC 244]. Learned counsel drew our attention to paragraph Nos.7 and 27 of *Rekha's* case and the same read as follows:



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'7. A perusal of the above statement in Para 4 of the grounds of detention shows that no details have been given about the alleged similar cases in which bail was allegedly granted by the court concerned. Neither the date of the alleged bail orders has been mentioned therein, nor the bail application number, nor whether the bail orders were passed in respect of the co-accused on the same case, nor whether the bail orders were passed in respect of other co-accused in cases on the same footing as the case of the accused. All that has been stated in the grounds of detention is that "in similar cases bails were granted by the courts". In our opinion, in the absence of details this statement is mere ipse dixit, and cannot be relied upon. In our opinion, this itself is sufficient to vitiate the detention order.

27. In our opinion, there is a real possibility of release of a person on bail who is already in custody provided he has moved a bail application which is pending. It follows logically that if no bail application is pending, then there is no likelihood of the person in custody being released on bail, and hence the detention order will be illegal. However, there can be an exception to this rule, that is, where a co-accused whose case stands on the same footing had been granted bail. In such cases, the detaining authority can reasonably conclude that there is likelihood of the detenu



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being released on bail even though no bail application of his is pending, since most courts normally grant bail on this ground. However, details of such alleged similar cases must be given, otherwise the bald statement of the authority cannot be believed.'

6. In response to the aforementioned point, learned Prosecutor submitted that CrI.MP.No.2859 of 2023 was erroneously furnished to the detenu. As regards no similar case being relied on, it is a matter of record learned Prosecutor really does not have much of a say.

7. We carefully considered the two points urged by the learned counsel for the petitioner. As regards bail order dated 22.02.2023 in CrI.M.P.No.2859 of 2023, it is clearly extraneous material and therefore, the same cannot but be seen as piece of paper / document which would not baffle the detenu. This would certainly impair the sanctus right of the detenu to make an effective representation against the impugned preventive detention order being constitutional safeguard ingrained in Article 22(5) of the Constitution of India. Therefore, the first point is sustained. As regards second point, a careful perusal of paragraph Nos.7 and 27 of **Rekha's** case



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(to be noted, the facts in *Rekha's* case are similar and comparable with the case on hand) shows that on facts *Rekha's* case is also one where the detenu therein namely, Ramakrishnan (to be noted, Rekha is his wife) was also clamped with a preventive detention order under Act 14 of 1982 and that is also a case where the Detaining Authority while arriving at subjective satisfaction qua imminent possibility of the detenu being enlarged on bail had not cited a similar case and had not given any details about the alleged similar case in which the bail order was allegedly granted by the Court concerned. The sequitur of this is, *Rekha's* principle comes to the aid of the learned counsel for the petitioner in his campaign against the impugned preventive detention order. Further sequitur is impugned preventive detention order deserves to be dislodged on the ground that subjective satisfaction arrived at by the Detaining Authority qua imminent possibility of the detenu being enlarged on bail is clearly impaired.

8. Before concluding, we also remind ourselves that preventive detention is not a punishment and HCP is a high prerogative writ.



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9. Apropos, the further sequitur is, captioned HCP is allowed.

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Impugned preventive detention order dated 14.03.2023 bearing reference No.61/BCDFGISSSV/2023 made by the second respondent is set aside and the detenu Thiru.Wesley @ Ranjith, male, aged 45 years, son of Thiru.Soundararaj, is directed to be set at liberty forthwith, if not required in connection with any other case / cases. There shall be no order as to costs.

(M.S.,J.)

(R.S.V.,J.)

16.08.2023

Index : Yes / No

Speaking / Non-speaking

Neutral Citation : Yes / No

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P.S: Registry to forthwith communicate this order to Jail authorities in Central Prison, Puzhal, Chennai.

To

1. State of Tamil Nadu
Rep. by the Additional Secretary,
Home, Prohibition and Excise Department
Fort St.George, Chennai-600 009.
2. The Commissioner of Police
Greater Chennai
Vepery, Chennai-600 007.
3. The Inspector of Police
Anti Vice Squad-1, Greater Chennai Police

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- Chennai.
4. The Superintendent of Prison
Central Prison-II
Puzhal, Chennai-600 066.
 5. The Public Prosecutor
High Court, Madras.

M.SUNDAR, J.,
and
R.SAKTHIVEL, J.,

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