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H.C.P.No.7 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.06.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE Mr.JUSTICE R.SAKTHIVEL

H.C.P.No.7 of 2023

Elachiyam
W/o.Kannan

.. Petitioner /
Mother of the detenu

Vs.

1. The Additional Chief Secretary to Government
Home, Prohibition & Excise Department
Secretariat, Chennai – 600 009
2. The Commissioner of Police
Greater Chennai
3. The Superintendent of Prison
Central Prison
Puzhal, Chennai –66
4. The Inspector of Police (L & O)
V5, Thirumangalam Police Station
Chennai

... Respondents



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Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus calling for the records in connection with the order of detention passed by the second respondent dated 22.11.2022 in Memo No.432/BCDFGISSSV/2022 against the petitioner son Karthick @ Lotta Karthick, male aged 24 years, son of Kannan, who is confined at Central Prison, Puzhal, Chennai, set aside the same and direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner : Mr.S.Senthilvel

For Respondents : Mr.E.Raj Thilak
Additional Public Prosecutor

ORDER

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

Captioned 'Habeas Corpus Petition' ['HCP' for the sake of brevity] has been filed by the mother of the detenu assailing a 'preventive detention order dated 22.11.2022 bearing reference No.432/BCDFGISSSV/2022' [hereinafter 'impugned preventive detention order' for the sake of convenience and brevity]. To be noted, fourth respondent is the sponsoring authority and second respondent is the detaining authority as impugned detention order has been made by second respondent.

2. Impugned detention order has been made under 'The Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Cyber law offenders,



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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] on the premise that the detenu is a 'Goonda' within the meaning of Section 2(f) of Act 14 of 1982.

3. There are five adverse cases and one ground case. The ground case which constitutes substantial part of substratum of the impugned preventive detention order is Crime No.326 of 2022 on the file of V-5, Thirumangalam Police Station for alleged offences under Sections 341, 294(b), 323, 336, 392, 397 and 506(ii) of 'Indian Penal Code, 1860 (Act 45 of 1860)' ['IPC' for brevity]. Owing to the nature of the challenge to the impugned detention order, it is not necessary to delve into the factual matrix or be detained further by facts.

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

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5. In the support affidavit qua captioned HCP, several grounds /points have been raised/urged but in the hearing, Mr.S.Senthilvel, learned counsel on record for petitioner predicated his campaign against the impugned preventive detention order on one point and that one point turns on imminent possibility of detenu being enlarged on bail and subjective satisfaction arrived at by the detaining authority in this regard.

6. A careful perusal of the impugned preventive detention order, more particularly paragraph 4 thereat brings to light that this subjective satisfaction has been arrived at by the Detaining Authority based on two factors. One factor is, a statement from the relatives of the detenu and another is bail order in Ashok's case dated 27.10.2021 in CrI.M.P.No.19198 of 2021 vide Crime No.527 of 2021 on the file of R6, Kumaran Nagar Police Station, Chennai.

7. Learned counsel pointed out that as regards the statement of the relative of the detenu, the same is at page 170 of the booklet and this

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statement recorded under Section 161(3) Cr.P.C from the mother of the detenu does not contain the date. Therefore, it is not clear as to whether the statement was given before or after the impugned preventive detention order.

8. As regards Ashok's case bail order, from paragraph 5 thereof it comes to light that the prosecutor has pointed out to the Court that there is only one previous case for the petitioner thereof whereas in the case on hand even according to the impugned preventive detention order there are five adverse cases. Therefore, the subjective satisfaction arrived at by the detaining authority as regards imminent possibility of detenu being enlarged on bail is impaired. The sequitur is, the impugned preventive detention order deserves to be dislodged.

9. Ergo, the captioned HCP is allowed and impugned preventive detention order dated 22.11.2022 bearing reference BCDFGISSSV No.432 of 2022 made by the second respondent is set aside and the detenu Thiru.Karthik @ Lotta Karthik, aged 24 years, son of Thiru.Kannan, is directed to be set at liberty forthwith, if not required in connection with any



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other case / cases. There shall be no order as to costs.

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(M.S.,J.)

(R.S.V.,J.)

19.06.2023

Index : Yes/No

Speaking order/Non-speaking order

Neutral Citation : Yes / No

gpa

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

To

1. The Additional Chief Secretary to Government
Home, Prohibition & Excise Department
Secretariat, Chennai – 600 009
2. The Commissioner of Police
Greater Chennai
3. The Superintendent of Prison
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5. The Public Prosecutor
Madras High Court, Chennai

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