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H.C.P.No.8 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.06.2023

Coram

**THE HONOURABLE MR.JUSTICE M.SUNDAR
and
THE HONOURABLE MR.JUSTICE R.SAKTHIVEL**

H.C.P.No.8 of 2023

Rani
W/o.Rajabather

.. Petitioner/mother
of the detenu

VS

1.The State of Tamil Nadu,
represented by its Secretary to Government,
Department of Prohibition and Excise (Home),
Fort St.George, Chennai - 600 009.

2.The Commissioner of Police,
Tambaram City,
Office of the Commissioner of Police,
Sholinganallur,
Chennai - 600 119.

3.The Inspector of Police,
T-12, Selaiyur Police Station,
Chennai.

4.The Superintendent of Prison,
Central Prison-II,
Puzhal, Chennai.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying
for issuance of a writ of habeas corpus to call for the records in



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BCDFGISSSV No.205/2022 dated 01.12.2022 on the file of second respondent herein and set aside the same as illegal and produce the detenu R.Veerabathiran @ Appu, son of Rajabathar, aged about 21 years, who is confined at Central Prison, Puzhal, Chennai, before this Court and set him at liberty.

For Petitioner : Mr.Ilayaraja Kandasamy

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 mother of detenu assailing a 'preventive detention order dated 01.12.2022 bearing reference BCDFGISSSV No.205/2022' [hereinafter 'impugned preventive detention order' for the sake of convenience and brevity]. To be noted, third 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



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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] 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.623 of 2022 on the file of T-12, Selaiyur Police Station for alleged offences under Sections 341, 294(b), 392, 397, 336 and 506(ii) of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity]. Owing to the nature of the challenge to the impugned preventive detention order, it is not necessary to delve into the factual matrix or be detained further by facts.

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



5. In the support affidavit *qua* captioned HCP several grounds have been raised/urged but in the hearing i.e., in the final disposal hearing, Mr.Ilayaraja Kandasamy, learned counsel on record for petitioner predicated his campaign against the impugned preventive detention order on one point which has cut ice with us. That one point which has cut ice with us turns on subjective satisfaction arrived at by the detaining authority as regards the imminent possibility of the detenu being enlarged on bail.

6. Elaborating on the aforementioned submission, learned counsel drew the attention of this Court to a portion of paragraph 4 of the grounds of impugned preventive detention order and that portion reads as follows:

'4. The accused hasn't filed any bail petition in the ground case in T-12, Selaiyur P.S. Cr.No.623/2022. However, it is pertinent to note that in a similar case, registered at Sankar Nagar P.S. Cr.No.617/2021 u/s.341, 336, 427, 392, 397, 506(ii) IPC, bail was granted to the accused Vinoth Kumar @ Vinoth by the Principal Sessions Judge of Kancheepuram District at Chengalpattu in CrI.M.P.No.5200/2021 on 20.11.2021. Hence, I infer that it is very likely of his coming out on bail in T-12, Selaiyur Police Station Cr.No.623/2022 since in the similarly cases, bails were granted by the courts after a lapse of time.'



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7. Adverting to the aforementioned portion of the grounds of impugned preventive detention order, learned counsel submitted that the detaining authority has noticed that the detenu has not filed any bail petition. Be that as it may, it was further submitted by learned counsel that the detaining authority has relied on a bail order dated 20.10.2021 in CrI.M.P.No.5200 of 2021 on the file of Principal Sessions Judge, Kancheepuram District, Chengalpattu [hereinafter referred to as **Vinoth Kumar's** case for the sake of convenience] to arrive at subjective satisfaction that there is imminent possibility of detenu being enlarged on bail. Learned counsel went on to submit that in **Vinoth Kumar's** case learned Sessions Judge has exercised the discretion to grant bail owing to there being no bad antecedents *qua* Vinoth Kumar. In this regard, learned counsel drew our attention to one portion of **Vinoth Kumar's** case bail order and the same reads as follows:

' Further, no bad antecedent is reported against the petitioner.'

8. In response to the aforementioned argument, learned Prosecutor submitted to the contrary that the offences in **Vinoth Kumar's** case and the ground case are broadly comparable.



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9. We are unable to accept the submission of learned Prosecutor as it is not merely the offences or the charge that are to be compared but the determinants/parameters for relief of grant of bail also need to be compared. In **Vinoth Kumar's** case as alluded to supra, there are no bad antecedents against Vinoth Kumar and this has been recorded by learned Sessions Judge in the bail order itself. As regards the impugned preventive detention order, even according to detaining authority, there are as many as five adverse cases and therefore, comparing **Vinoth Kumar's** case bail order with the ground case is an exercise which reminds one of the age old adages comparing 'Apples and Oranges' and comparing cheese and chalk. As the comparison is bad, the sequitur is, subjective satisfaction arrived at by the Detaining Authority *qua* imminent possibility of detenu being enlarged on bail is clearly impaired. This means the further sequitur is, impugned preventive detention order deserves to be dislodged.

Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 01.12.2022 bearing reference BCDFGISSSV No.205/2022 made by the second respondent is set aside and the detenu Thiru.R.Veerabathiran @ Appu, aged 21 years, son of Thiru.Rajabathar,



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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.]
26.06.2023

Index : Yes

Neutral Citation : Yes

gm

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

To

- 1.The Secretary to Government,
Department of Prohibition and Excise (Home),
Fort St.George, Chennai - 600 009.
- 2.The Commissioner of Police,
Tambaram City,
Office of the Commissioner of Police,
Sholinganallur,
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- 5.The Public Prosecutor,
High Court, Madras.



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