



H.C.P.No.32 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.06.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE Mrs.JUSTICE K.GOVINDARAJAN
THILAKAVADI

H.C.P.No.32 of 2023

Sujitha
W/o.Kithiyon Ebinesan

.. Petitioner /
wife of the detenu

Vs.

1. The Secretary to Government
Home, Prohibition and Excise Department
Secretariat
Fort. St. George
Chennai – 600 009
2. The Commissioner of Police
Greater Chennai
O/o.The Commissioner of Police
Vepery
Chennai – 600 007
3. The Superintendent of Prison
Central Prison, Puzhal
Chennai

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4. State rep. By its
The Inspector of Police
V5, Thirumangalam Police Station
Chennai

... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus calling for the entire records relating to the petitioner's husband detention under Tamil Nadu Act 14 of 1982 vide detention order dated 07.10.2022 on the file of the second respondent herein made in proceedings Memo No.340/BCDFGISSSV/2022 dated 07.10.2022 quash the same as illegal and consequently direct the respondents herein to produce the petitioner's husband namely Kithiyon Ebinesan, son of Vijayakumar, aged 22 years before this Court and set him at liberty.

For Petitioner	:	Mr.B.Manoharan
For Respondents	:	Mr.R.Muniyapparaj Additional Public Prosecutor Assisted by Mr.Sylvester John Advocate

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 wife of detenu assailing a 'preventive detention order dated 07.10.2022 bearing reference Memo No.340/BCDFGISSSV/2022' [hereinafter 'impugned detention order' for the sake of convenience and brevity]. To be noted, fourth respondent is the sponsoring authority and



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second respondent is the detaining authority as impugned detention order has been made by the second respondent.

2. Impugned 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 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 four adverse cases and one ground case. The ground case which constitutes substantial part of substratum of the impugned preventive detention order is Crime No.272 of 2022 on the file of V-5. Thirumangalam Police Station for alleged offences under Sections 341, 294(b), 336, 394. 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.



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4. Mr.B.Manoharan, learned counsel on record for petitioner and Mr.R.Muniyapparaj, learned State Additional Public Prosecutor, assisted by Mr.Sylvester John, Advocate, for all respondents are before us.

5. In the support affidavit qua captioned HCP, very many points have been urged but in the hearing, learned counsel for petitioner predicated his submission on one point and that one point has found favour with us. To be noted, the lone point on which learned counsel predicated his campaign against the impugned preventive detention order turns on subjective satisfaction arrived at by the Detaining Authority qua imminent possibility of the detenu being enlarged on bail.

6. Adverting to the detention order, learned counsel submitted that the aforementioned subjective satisfaction has been arrived at by the Detaining Authority by comparing the ground case with a bail order dated 24.08.2021 in CrI.M.P.Nos.13436 and 13772 of 2021 vide Crime No.446 of 2021 on the file of K-2 Ayanavaram Police Station ('Vinoth @ Vinothkumar's case' for convenience). Vinoth @ Vinothkumar's case bail order has been



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furnished to the detenu as part of the grounds booklet and we had the benefit of perusing the same. A careful perusal of Vinoth @ Vinothkumar's case and more particularly paragraph 5 thereat, makes it clear that Vinoth @ Vinothkumar has no bad antecedents has weighed in the mind of the learned Sessions Judge in gravitating towards exercising discretion in favour of grant of bail. In complete contradistinction, in the case on hand there are as many as four adverse cases even according to the impugned preventive detention order.

7. Learned Prosecutor in his contra submission submitted that Vinoth @ Vinothkumar's case and the ground case are comparable as the offences are broadly akin to each other. We are unable to agree as the parameters and determinants for the discretionary relief of grant of bail have to be compared in a manner that does not lead to comparison of two dissimilar cases. In the case on hand, we find Vinoth @ Vinothkumar's case and grounds case are dissimilar. This means that the aforementioned subjective satisfaction arrived at by the Detaining Authority is impaired and therefore the impugned preventive detention order deserves to be dislodged.



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8. Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 07.10.2022 bearing reference 340/BCDFGISSSV/2022 made by the second respondent is set aside and the detenu Thiru.Kithiyon Ebinesan, aged 22 years, son of Thiru.Vijayakumar 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.)

(K.G.T.,J.)

06.06.2023

Index : Yes

Speaking order

Neutral Citation : Yes

gpa

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

To

1. The Secretary to Government
Home, Prohibition and Excise Department
Secretariat
Fort. St. George
Chennai – 600 009

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4. State rep. By its
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5. The Public Prosecutor
Madras High Court, Chennai



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M.SUNDAR, J.,
and
K.GOVINDARAJAN THILAKAVADI, J.,

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