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H.C.P.No.21 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.06.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE Mr.JUSTICE R.SAKTHIVEL

H.C.P.No.21 of 2023

Arumugam

.. Petitioner /
Grandfather of the detenu

Vs.

1. State Rep. By its

The Secretary to Government of Tamil Nadu
Prohibition & Excise Department (Home)
Secretariat, Fort St.George
Chennai – 600 009

2. The Commissioner of Police
Commissioner Office Avadi City
Avadi
Chennai

3. The Superintendent of Prison
Central Prison
Puzhal, Chennai

4. The Inspector of Police
E-5, Sholavaram Police Station
Avadi City, 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 to call for the entire records relating to the petitioner's grandson detention under Tamil Nadu Act 14 of 1982 vide detention order dated 30.11.2022 on the file of 2nd respondent herein and made in proceedings in Memo No.165/BCDFGISSSV/2022 and quash the same as illegal and consequently direct the respondents herein to produce the petitioner's grandson namely Naveen, son of Saravanan, aged about 24 years before this Court and set him at liberty.

For Petitioner : Mr.P.Prince Premkumar
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 grandfather of the detenu assailing a 'preventive detention order dated 30.11.2022 bearing reference 165/BCDFGISSSV/2022' [hereinafter 'impugned 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.



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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 is one adverse case and one ground case. The ground case which constitutes substantial part of substratum of the impugned preventive detention order is Crime No.897 of 2022 on the file of E-5, Sholavaram Police Station for alleged offences under Sections 147, 148, 341, 294(b), 336, 427, 392, 397, 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.P. Prince Premkumar, 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 points have been raised/urged but in the final hearing Mr.P. Prince Premkumar, learned counsel for petitioner predicated his campaign against the impugned preventive detention order on one point which turns on subjective satisfaction arrived at by the Detaining Authority qua imminent possibility of the detenu being enlarged on bail. This point urged by the learned counsel for petitioner found favour with us and therefore, we refrain ourselves from examining the other points that have been urged in the support affidavit.

6. Reverting to the aforementioned point, learned counsel drew our attention to paragraph 4 of the grounds of impugned preventive detention order and the relevant portion thereat reads as follows:

'4.....The sponsoring authority has stated that it is learnt that the relatives of Thiru.Naveen are taking action to take him out on bail in E-5 Sholavaram Police Station, Crime No.897/2022 case by filing another bail application before the appropriate court. Further in a similar case, registered at R-3, Ashok Nagar Police Station Cr.No.59/2021, u/s.147, 148, 449, 324 and 302 IPC, bail was granted to the accused Thiru.Balaji by the Court of Principal Session, Chennai in Crl.M.P.No.10485 of 2021. In a similar case registered at under Section 294(b), 341, 323, 397, 336, 427 and 506(ii) IPC, in J-4,Kotturpuram Police Station



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Crime No.43 / 2018, the bail was granted by the Court of Principal Sessions Judge at Chennai in Crl.M.P.No.1759 of 2018. Hence I infer that it is very likely of his coming out on bail in E-5 Sholavaram Police Station Crime No.896/2022 and there is real possibility of his coming out on bail in E-5, Sholavaram Police Station Crime No.897 of 2022 case by filing another bail application before the appropriate court since in a similar case, the bail was granted by the Court after a lapse of time'

7.Adverting to aforementioned portion of impugned preventive 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 01.02.2018 in Crl.M.P.Nos.1759 of 2018 vide Crime No.43 of 2018 on the file of J-4,Kotturpuram Police Station. The bail order has been furnished to the detenu as part of the grounds booklet and we had the benefit of perusing the same. A careful perusal of the bail order and more particularly paragraph 3 thereat, makes it clear that the petitioner therein had no bad antecedents and that has weighed with the learned Sessions Judge in gravitating towards exercising discretion in favour of grant of bail. In complete contradistinction, in the case on hand there is an adverse case even

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according to the impugned preventive detention order.

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8. Learned Prosecutor in his submission to the contrary, submitted that the bail granted in the aforementioned case and the ground case are comparable as the offences are broadly akin to each other. We are unable to agree as comparison should be qua parameters and determinants also. In the case on hand, we find that the case (bail order) relied on by the Detaining Authority and the ground case are dissimilar for the reason delineated elsewhere supra in this order. 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.

9. Ergo, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 30.11.2022 bearing reference 165/BCDFGISSSV /2022 made by the second respondent is set aside and the detenu Thiru.Naveen, aged 24, son of Thiru.Saravanan, is directed to be set at liberty forthwith, if not required in connection with any other case /



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cases. There shall be no order as to costs.

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(M.S.,J.)

(R.S.V.,J.)

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

To

1. The Secretary to Government of Tamil Nadu
Prohibition & Excise Department (Home)
Secretariat, Fort St.George
Chennai – 600 009
2. The Commissioner of Police
Commissioner Office Avadi City
Avadi
Chennai
3. The Superintendent of Prison
Central Prison
Puzhal, Chennai
4. The Inspector of Police
E-5, Sholavaram Police Station
Avadi City, Chennai
5. The Public Prosecutor
Madras High Court, Chennai

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

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