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H.C.P.No.15 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.03.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

H.C.P.No.15 of 2023

Poonkodi
W/o.Mariappan

.. Petitioner/
Mother of the detenu

Vs.

1. The Secretary to Government
Home, Prohibition and Excise Department
Secretariat, Chennai-600 009.
2. The Commissioner of Police
Salem City
3. The Superintendent of Police
Central Prison
Salem - 7
4. The Inspector of Police
Kitchipalayam Police Station
Salem City

.. Respondents



H.C.P.No.15 of 2023

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 connection with the order of detention passed by the second respondent dated 22.04.2022 in C.M.P.No.29/Goonda/Salem City/2022 against the petitioner son Mohanraj @ Suruttaiyan, male aged 31 years, son of Mariappan who is confined at Central Prison, Salem and set aside the same and direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner : Ms.K.Sathiya
for Mr.D.Balaji

For Respondents : Mr.R.Muniyapparaj
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 22.04.2022 bearing reference C.M.P.No.29/Goonda/Salem City/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. The ground case which is the sole substratum of the impugned detention order is Crime No.135 of 2022 on the file of Kitchipalayam Police Station for alleged offences under Sections 341, 392 read with 397 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 detention order, it is not necessary to delve into the factual matrix or be detained further by facts.

4. Ms.K.Sathiya, learned counsel representing Mr.D.Balaji, counsel on record for petitioner and Mr.R.Muniyapparaj, learned State Additional Public Prosecutor for all respondents are before us.



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5. Notwithstanding very many averments/grounds in the support affidavit, Ms.K.Sathiya, learned counsel representing the counsel on record for petitioner at the hearing in the arguments predicated her campaign against the impugned detention order on one point and that one point turns on imminent possibility of the detenu being enlarged on bail. Elaborating on this, learned counsel submitted that the detaining authority in the impugned detention order has relied on a case registered in Crime No.693 of 2018 on the file of Kannankuruchi police station for alleged offences under Sections 392, 397 and 506(ii) IPC to arrive at the subjective satisfaction that there is an imminent possibility of detenu being enlarged bail. Learned counsel drew our attention to the ground case which is registered as Crime No.135 of 2022 on the file of Kitchipalayam Police Station for alleged offences under Sections 341, 392 read with Sections 397 and 506(ii) of IPC. Learned counsel pointed out that Section 341 of IPC which deals with punishment for wrongful restraint is not there in what according to the detaining authority is the similar case. Further more, the detaining authority says in the impugned detention order that a relative of Mohanraj @



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Suruttaiyan, the detenu, is taking steps to move a bail application. Neither a bail application has been moved nor a statement from the relative of the detenu has been obtained to support this.

6. In response to the above argument, learned Prosecutor submits to the contrary. Learned Public Prosecutor submits that the case registered in Kannankuruchi police station in Crime No.693 of 2018 and the ground case in Crime No.135 of 2022 on the file of Kitchipalayam police station are broadly comparable. This does not make the cut with us on the facts and circumstances of the case as Section 341 is an important aspect of the matter when it comes to discretionary relief of grant of bail.

7. As regards the efforts said to be taken by a relative of the detenu, there is no statement and therefore, the prosecutor really does not have much of a say. Absent statement, this is clearly in the abstract. Therefore, both the grounds relied on by the detaining authority to arrive at the subjective satisfaction that there is imminent possibility of detenu being released on bail cannot be sustained owing to which we have no hesitation in saying that captioned HCP deserves to be allowed.



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Ergo, captioned HCP is allowed. Impugned detention order dated

22.04.2022 bearing reference C.M.P.No. 29/Goonda/SALEM CITY/2022

made by the second respondent is set aside and the detenu Thiru. Mohanraj

@ Suruttaiyan, aged 31 years, son of Thiru.Mariappan, 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.)

(M.N.K.,J.)

14.03.2023

Index : Yes

Speaking

Neutral Citation : Yes

gpa

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



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To

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5. The Public Prosecutor
High Court, Madras.



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