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H.C.P.No.55 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.07.2023

CORAM

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

H.C.P.No.55 of 2023

Shakila

.. Petitioner

Vs

1. The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George, Chennai -9.
2. The Commissioner of Police,
Tambaram City.
- 3.The Superintendent,
Central Prison, Puzhal, Chennai 66.
- 4.The Inspector of Police,
T 12, Selaiyur Police Station,
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 relating to the detention order passed by the second respondent pertaining to order made in BCDFGISSSV No.206/2022 dated 01.12.2022 in detaining the detenu under Section 2(f) of Tamil Nadu Act 14 of 1982, as a Goonda and quash the same and direct the respondent to produce the detenu A.Ajith Kumar @ Gana Ajith, son of

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Arumugam, aged about 23 years, who is detained at Central Prison, Puzhal, Chennai before this Court and set him at liberty.

For Petitioner : Mr.G.Nirmal Krishnan
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.206/2022' [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 preventive 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)'



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[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. The ground case which constitutes substantial part of substratum of the impugned 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 detention order, it is not necessary to delve into the factual matrix or be detained further by facts.

4. Mr.G.Nirmal Krishnan, 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 points/grounds have been raised/urged but in the final hearing today, learned counsel for petitioner projected his argument on the point that



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subjective satisfaction arrived at by the detaining authority as regards imminent possibility of detenu being enlarged on bail is impaired. Elaborating on this submission, learned counsel drew our attention to a portion of paragraph 4 of the grounds of impugned preventive detention order which reads as follows:

'4.....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 Crl.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 Crl.No.623/2022 since in the similarly placed cases, bails were granted by the courts after a lapse of time.....'

6. We had the benefit of perusing the aforementioned bail order [we shall refer to the same as '*Vinoth's case*' as Vinoth is the petitioner therein]. In *Vinoth's case* bail order, it is stated as follows:

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

7. Adverting to the aforementioned portion of *Vinoth's case* bail order, learned counsel for petitioner submits that even according to the impugned preventive detention order, there are as many as five adverse cases in the case on hand and therefore, the comparison is



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bad. We have no hesitation in accepting the submission of learned counsel for petitioner that subjective satisfaction arrived at by the detaining authority is impaired as *Vinoth's case* and detenu's case are clearly not comparable as regards bail probability. The sequitur is, impugned preventive detention order deserves to be dislodged.

8. Apropos, the further sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 01.12.2022 bearing reference BCDFGISSSV No.206/2022 made by the second respondent is set aside and the detenu Thiru.A.Ajith Kumar @ Gana Ajith, male, aged 23 years, Son of Thiru. Arumugam, 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.)
04.07.2023

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



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To

1. The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
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2. The Commissioner of Police,
Tambaram City.
3. The Superintendent,
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5. The Public Prosecutor
High Court, Madras.



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

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