



WEB COPY



H.C.P.No.82 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.07.2023

CORAM

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

H.C.P.No.82 of 2023

Padma

.. Petitioner

Vs

1. The Secretary to the Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai -9.

2. The Commissioner of Police,
Salem City.

3.The Superintendent of Prison,
Central Prison, Salem – 7.

4.The Inspector of Police,
Annadanapatty Police Station,
Salem City.

.. 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 connection with the order of detention passed by the second respondent dated 15.12.2022 in C.M.P. No.159/Goonda/Salem City/2022 against the petitioner's son Premkumar @ Bonda Praveen, male, aged 23 years, S/o.Mani, 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.



WEB COPY



H.C.P.No.82 of 2023

For Petitioner : Mr.D.Balaji
For Respondents : Mr.E.Raj Thilak
Additional Public Prosecutor

ORDER

[Order of the Court was made by **M.SUNDAR, J.,**]

When the captioned 'Habeas Corpus Petition' (hereinafter 'HCP' for the sake of convenience and clarity) was listed in the Admission Board on 20.01.2023, this Court made the following order:

'Captioned Habeas Corpus Petition has been filed in this Court on 11.01.2023 inter alia assailing a detention order dated 15.12.2022 bearing reference C.M.P.No.159/Goonda/Salem City/2022 made by 'second respondent' [hereinafter 'Detaining Authority' for the sake of convenience and clarity].

2. The mother of the detenu is the petitioner.

3. Mr.D.Balaji, learned counsel on record for habeas corpus petitioner is before us.

4. The aforementioned detention order has been made on the basis that the detenu is a 'Goonda' under Section 2(f) of '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].

5. The detention order has been assailed inter alia on the ground that the Detaining Authority has exceeded the jurisdiction and passed the order of detention under Section 2 of Act 14 of 1982 without any power.

6. Prima facie case made out for issue of notice.

7. Admit. Issue notice returnable in four weeks.

8. Mr.R.Muniyapparaj, learned Additional Public Prosecutor, State of Tamil Nadu accepts notice for all



H.C.P.No.82 of 2023

respondents. List the captioned Habeas Corpus Petition accordingly.'

WEB COPY

2. The aforementioned order made in the 20.01.2023 Admission listing shall be read as an integral part and parcel of this order which means that the short forms, short references and abbreviations used in the order in the Admission listing shall be used in the instant order also.

3. There are four adverse cases. The ground case which constitutes substantial part of substratum of the impugned preventive detention order is Crime No.565 of 2022 on the file of Annadanapatty Police Station for the alleged offences under Sections 341, 392 r/w 397 and 506(ii) of IPC. 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.D.Balaji, learned counsel on record for petitioner and Mr.E.Raj Thilak, learned State Additional Public Prosecutor for all respondents are before us.

5. As would be evident from the Admission Board order dated



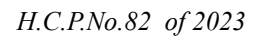
H.C.P.No.82 of 2023

20.01.2023, at the time of admission, learned counsel for HCP petitioner projected the point that the detaining authority has exceeded his jurisdiction in making the impugned preventive detention order under Section 2 of Act 14 of 1982 but in the Final Hearing Board today, Mr.D.Balaji, learned counsel on record for petitioner submitted that four adverse cases and one ground case have been mentioned in the impugned preventive detention order and as regards the grounds booklet, bail order (qua the detenu in the adverse case No.2 i.e., Crime No.1170 of 2020 on the file of Kondalampatty Police Station, Salem District for alleged offences under Section 392 r/w 397 IPC) is not readable.

6. The aforementioned point turns heavily on records and therefore learned Prosecutor really does not have much of a say.

7. This Court had the benefit of perusing the grounds booklet and this Court is of the view that the aforementioned bail order i.e., bail order of detenu in adverse case No.2 which is at pages 63 to 65 is not readable (at least the lower portion of page 63 is certainly not readable). A scanned reproduction of the same is as follows:

Page Nos.4/8





H.C.P.No.82 of 2023

This means that right of the detenu to make an effective representation as against the impugned preventive detention order has been impaired. Such a right is sanctus constitutional right ingrained in Article 22(5) of the Constitution of India. This constitutional right of the detenu has been subjected to infraction. This has vitiated the impugned preventive detention order. Therefore, the impugned preventive detention order is liable to be dislodged.

8. Ergo, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 15.12.2022 bearing reference C.M.P. No.159/Goonda/Salem City/2022 made by the second respondent is set aside and the detenu Thiru.Premkumar @ Bonda Praveen, aged 23 years, Son of Thiru.Mani, 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.)
10.07.2023

Index : Yes/No
Neutral Citation : Yes/No
mmi

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

Page Nos.6/8



H.C.P.No.82 of 2023

WEB COPY

To

1. The Secretary to the Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai -9.
2. The Commissioner of Police,
Salem City.
3. The Superintendent of Prison,
Central Prison, Salem – 7.
4. The Inspector of Police,
Annadanapatty Police Station,
Salem City.
5. The Public Prosecutor
High Court, Madras.



WEB COPY



H.C.P.No.82 of 2023

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

mmi

H.C.P.No.82 of 2023

10.07.2023

Page Nos.8/8