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H.C.P.No.102 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.07.2023

Coram

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

H.C.P.No.102 of 2023

Faritha Begam

.. Petitioner

VS

- 1.The State of Tamil Nadu
Rep. by Secretary to Government,
Prohibition and Excise Department,
Fort St.George, Chennai – 600 009.
- 2.The Commissioner of Police
Tambaram City
Office of the Commissioner of Police
(Goondas Section)
Sholinganallur
Chennai – 600 119
3. The Superintendent of Police
Central Prison, Puzhal
4. The Inspector of Police
T-10, Manimangalam Police Station
Chennai

.. Respondents

Petition filed under Article 226 of the Constitution of India praying
for issuance of a writ of habeas corpus call for the records relating to the



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detention order dated 28.12.2022 passed by the second respondent in B.C.D.F.G.I.S.S.S.V.No.218 of 2022 and quash the same and direct the respondents herein to produce the petitioner's son Mohamed Sadam Hussan, son of Mohamed Haniffa, aged 25 years, who is presently undergoing detention in the Central Prison, Puzhal before this Court and set him at liberty forthwith.

For Petitioner : Mr.M.Vetrivel
for Mr.P.Chandra Sekar

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 24.01.2023, 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 28.12.2022 bearing reference BCDFGISSSV No.218/2022 made by 'second respondent' [hereinafter 'Detaining Authority' for the sake of convenience and clarity]. To be noted, fourth respondent is the Sponsoring Authority.

2. Mother of the detenu is the petitioner.

3. Ms.M.Udayarani, learned counsel representing the



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counsel on record for habeas corpus petitioner is before us.

Learned counsel for petitioner submits that ground case qua the detenu is for alleged offences under Sections 147, 148, 341, 294(b), 307, 302 of IPC and Sections 3 and 4(a) of Explosive Substances Act, 1908 in Crime No.369 of 2022 on the file of T-10 Manimangalam Police Station.

4. The aforementioned detention order has been made on the premise 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 copy of grounds of detention in English was not properly translated in Tamil, which prevented the detenu from making effective representation against the detention order.

6. Prima facie case made out for admission. Admit. Issue Rule nisi returnable by four weeks.

7. Mr.R.Muniyapparaj, learned Additional Public Prosecutor, State of Tamil Nadu accepts notice for all respondents. Registry to tag H.C.P.Nos.89, 90 and 101 of 2023 along with this Habeas Corpus Petition and list accordingly.'



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2. The aforementioned order made in the 24.01.2023 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 is no adverse case. The solitary case which is the sole substratum of the impugned preventive detention order is Crime No.369 of 2022 on the file of T-10, Manimangalam Police Station for alleged offences under Sections 147, 148, 341, 294(b), 307, 302 IPC and Sections 3 and 4(a) of Explosive Substances Act, 1908. Owing to the nature of the challenge to the impugned preventive detention order, it is not necessary to delve into the factual matrix or be detained further by facts.

4. Mr.M.Vetrivel, learned counsel representing the counsel on record for petitioner and Mr.E.Raj Thilak, learned State Additional Public Prosecutor for all respondents are before us.

5. At the time of admission i.e., in the Admission Board, the point that copy of grounds of detention in English was not properly translated in Tamil impairing the detenu's right to make an effective representation against the impugned preventive detention order was raised but in the final hearing today learned counsel posited his argument on the point



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that subjective satisfaction arrived at by the Detaining Authority as regards imminent possibility of detenu being enlarged on bail is impaired.

Elaborating on this argument, learned counsel drew our attention to a portion of paragraph No.3 of the impugned preventive detention order and that part of paragraph No.3 which is relevant for this point reads as follows:

'3..... However it is pertinent to note that in a similar case, registered at Kundrathur P.S. Cr.No.825/2021 u/s. 147, 148, 294(b), 201, 212, 364, 302 IPC, bail was granted to the accused Hussain Sherif @ Sharuk Hussain by the Judicial Magistrate, Sriperumbudur vide C.M.P.No.81 of 2021 on 28.01.2021. Hence, I infer that there is a real possibility of his coming out on bail by filing a petition in T-10 Manimangalam Police Station Cr.No.369 of 2022 since in the similarly placed cases, bails were granted by the courts after a lapse of time.....'

(To be noted, in the grounds of detention the case number and date have been wrongly mentioned as C.M.P.No.81 of 2021 on 28.01.2021 instead of C.M.P.No.81 of 2022 on 28.01.2022).

The aforementioned bail order in Hussain Sherif's case has been furnished to the detenu in the booklet and the same is at Page Nos.371 to 375. A careful perusal of this Hussain Sherif's case bail order brings to



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light that it is a case of default bail under Section 167(2) of the 'Code of Criminal Procedure, 1973 (2 of 1974)' ['Cr.P.C' for the sake of brevity].

Therefore, relying on Hussain Sherif's case as a benchmark to arrive at subjective satisfaction qua imminent possibility of detenu being enlarged on bail is clearly flawed and the consequence is, impugned preventive detention order deserves to be dislodged.

6. Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 28.12.2022 bearing reference BCDFGISSSV No.218/2022 made by the second respondent is set aside and the detenu Thiru.M.Mohamed Sadam Hussain, aged 25 years, son of Thiru.Mohamed Haniffa, 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.)

17.07.2023

Index : Yes

Neutral Citation : Yes

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



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To

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Tambaram City
Office of the Commissioner of Police
(Goondas Section)
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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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