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H.C.P.No.122 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.06.2023

CORAM

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

H.C.P.NO.122 OF 2023

V.Mallika

.. Petitioner

Vs.

1.The Additional Chief Secretary to Government
Home, Prohibition and Excise Department
Secretariat, 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 Prison
Central Prison
Puzhal, Chennai – 600 066.

4.The Inspector of Police
T-14, Pallikaranai Police Station,
Chennai – 600 100.

.. Respondents



H.C.P.No.122 of 2023

PRAYER: Petition filed under Article 226 of the Constitution of India praying for issuance of a writ order or direction in the nature of WRIT OF HABEAS CORPUS, to call for the entire records connected with the detention order of the 2nd respondent in BCDFGISSSV No.149/2022 dated 03.10.2022 and quash the same and direct the respondents to produce the body and person of detenu namely Vignesh @ Vicky S/o. Vijayakumar aged about 19 years detained in Central Prison, Puzhal, Chennai before this Court and set him at liberty forthwith.

For Petitioner : Mr.B.M.Santharam
For Respondents : Mr.E.Raj Thilak
Additional Public Prosecutor

ORDER

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

When the matter came up for admission on 27.01.2023, this Bench made an order and a scanned reproduction of the same is as follows:



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M.SUNDAR, J.,
and
M.NIRMAL KUMAR, J.,

(Order of the Court was made by M.SUNDAR, J.,)

Captioned Habeas Corpus Petition has been filed in this Court on 20.01.2023 *inter alia* assailing a detention order dated 03.10.2022 bearing reference BCD/GHSSV No.149/2022 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. Mr.B.M.Santhuram, learned 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 341, 294(b), 397, 427, 336, 506(ii) IPC in Crime No.844 of 2022 on the file of Pallikaranai 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

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offenders. Drug-offenders, Forest-offenders, Goondas, Immoral traffic offenders, Nand-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 there is a delay of 45 days in passing the detention order but the same has not been explained by the Detaining Authority at the time of passing 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. List the captioned Habeas Corpus Petition accordingly.

[M.S.J.]

[M.N.K.J.]

27.01.2023

mk



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2. There are six adverse cases. The ground case which is the sole substratum of the impugned detention order is Crime No.844 of 2022 on the file of T-14 Pallikaranai Police Station for alleged offences under Sections 341, 294(b), 397, 427, 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.

3. Mr. B. M. Santharam, learned counsel on record for petitioner and Mr. E. Raj Thilak, learned State Additional Public Prosecutor for all respondents are before us.

4. Though in the admission board, the point that there is a delay of 45 days in passing the detention order but the same has not been explained by the Detaining Authority at the time of passing the detention order was raised, in the hearing today, learned counsel for the petitioner proceeded to assail the impugned preventive detention order on the ground that the subjective satisfaction arrived at by the Detaining Authority qua imminent possibility of detenu being enlarged on bail is impaired.



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5.Elaborating on the above submission, learned counsel for petitioner drew our attention to paragraph 4 of the grounds of impugned preventive detention order and the most relevant portion of paragraph 4 reads as follows:

'4.I am also aware that Thiru Vignesh @ Vicky who was remanded in T-14, Pallikaranai P.S. Cr.Nos.840/2022, 841/2022 and 844/2022 has not filed any bail petition so far in T-14, Pallikaranai P.S. Cr.Nos.840/2022, 841/2022 and 844/2022. However, the sponsoring authority has stated that it is learnt that Thiru Vignesh @ Vicky's relatives are taking steps to take him out on bail in T-14, Pallikaranai P.S. Cr.No.844/2022 by filing a bail application in appropriate court. Further, it is pertinent to note that in a similar case, registered at Sankar Nagar P.S. Cr.No.617/2021 u/s.341, 294(b), 323, 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 Crf.M.P.No.5200/2021 on 20.10.2021...'



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6. Thereafter, learned counsel drew our attention to the aforementioned Vinoth Kumar's case bail order which has been furnished to the detenu as part of the grounds booklet.

7. Learned counsel submitted that there was no bad antecedent in Vinoth Kumar's case and therefore, it is dissimilar. To be noted, the most relevant portion in Vinoth Kumar's case bail order reads as follows:

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

8. In response to the aforementioned argument, learned Prosecutor submitted that the charges / alleged offences in Vinoth Kumar's case and ground case in the case on hand are broadly comparable.

9. We carefully considered the rival submission. We find that it is not mere similarity of alleged offences or charges but it is also the parameters/ determinants for grant of bail which need to be compared for arriving at subjective satisfaction for imminent possibility of detenu being enlarged on bail. In this view of the matter, in Vinoth Kumar's case there was



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no bad antecedent for the petitioner (bail applicant) whereas, in the case on hand, even according to the grounds of impugned preventive detention order, there are as many as six adverse cases qua the detenu. Therefore, comparison of Vinoth Kumar's case with the case on hand for arriving at aforementioned subjective satisfaction is clearly a flawed exercise and the impugned preventive detention order is vitiated and the same deserves to be dislodged.

10.Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 03.10.2022 bearing reference BCDFGISSSV No.149/2022 made by the second respondent is set aside and the detenu Thiru. Vignesh @ Vicky, aged 19 years, Son of Thiru.Vijayakumar, 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.)

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Index : Yes / No

Neutral Citation : Yes/No

TK

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

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To

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