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H.C.P.No.148 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.04.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

and

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

H.C.P.No.148 of 2023

K.Elumalai

S/o.Kannan

.. Petitioner/father of Detenu

Vs.

1.The Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George,
Chennai - 600 009.

2.The Commissioner of Police,
Greater Chennai,
Veppery, Chennai.

3.The Superintendent of Police,
Central Prison, Puzhal,
Chennai.

4.The Inspector of Police (Law & Order),
D-2, Anna Salai Police Station,
Chennai.

.. Respondents



H.C.P.No.148 of 2023

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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 17.06.2022 in BCDFGISSSV No.162 of 2022 against the petitioner's son Yuvaraj, male aged about 26 years, son of Elumalai, who is confined at Central Prison, Puzhal, Chennai and set aside the same and direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner : Mr.A.Venkateswara Babu
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 02.02.2023, this Bench made an order and a scanned reproduction of the same is as follows:



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H.C.P.No.148 of 2023

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 24.01.2023 *inter alia* assailing a detention order dated 17.06.2022 bearing reference BCDFGISSSV No.162/2022 made by 'second respondent' [hereinafter 'Detaining Authority' for the sake of convenience and clarity]. To be noted, fourth respondent is the Sponsoring Authority.

2. Father of the detenu is the petitioner.

3. Mr.A.Venkateswara Babu, 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 147, 341, 294(b), 324, 326 and 506(ii) IPC read with Section 75 of the Juvenile Justice (Care and Protection of Children) Act 2015 in Crime No.112 of 2022 on the file of D-2 Anna Salai 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

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சென்னை மாநகராட்சி

Nadu Prevention of Dangerous Activities of Bootleggers, Cyber law offenders, Drug-offenders, Forest offenders, Goondas, Immoral traffic offenders, Sand-offenders, Sexual-offenders, Sperm-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 grounds of detention was not properly translated in Tamil, which prevented the defenu from making an effective representation.

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.

[M.S.J.,]

02.02.2023

[M.N.K.I.,]

gpa



H.C.P.No.148 of 2023

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2. Mr.A.Venkateswara Babu, learned counsel for petitioner and Mr.E.Raj Thilak, learned State Additional Public Prosecutor for all respondents are before us.

3. We are informed that co-accused was clamped with a similar preventive detention order which was challenged before this Court vide H.C.P.No.1424 of 2022 and HCP was allowed vide order dated 10.01.2023, which reads as follows:



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H.C.P.No.148 of 2023



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H.C.P.No.1424 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.01.2023

Coram

The Honourable Mr. Justice **P.N.PRAKASH**
and
The Honourable Mr. Justice **N.ANAND VENKATESH**

Habeas Corpus Petition No.1424 of 2022

Logeswari
W/o Karthikeyan

..... Petitioner

-Versus-

- 1.The State of Tamil Nadu,
Rep. by its Addl. Chief Secretary to Government,
(Home), Prohibition and Excise Department,
Secretariat, Fort St. George,
Chennai 600 009.
- 2.The Commissioner of Police,
Greater Chennai,
132, EVK Sampath Road,
Vepery, Chennai 600 007.
- 3.The Superintendent,
Central Prison,
Puzhal, Chennai 600 066.
- 4.The Director General of Police,
O/o Director General of Police,
Dr.Radha Krishnan Salai,
Mylapore, Chennai 600004.

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5. The Inspector of Police,
Law and Order,
D-2, Anna Salai Police Station,
Triplicane, Chennai.



H.C.P.No.1424 of 2022

.... Respondents

Petition filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus calling for the entire records relating to the Impugned order of detention passed by the second respondent in BCDFGISSSV No.161/2022 dated 17.06.2022 and set aside the same and consequently direct the respondents to produce the detenu viz., Karthikeyan S/o.Desinghu, aged about 32 years, petitioner's husband now confined at Central Prison Puzhal Chennai before this court and set him at liberty.

For Petitioner : Mr.S.Saravanakumar

For Respondents : Mr.R.Muniyapparaj,
Additional Public Prosecutor

ORDER

[Order of the Court was made by N.ANAND VENKATESH.J.,]

The petitioner is the wife of the detenu viz., Karthikeyan S/o.Desinghu, aged 32 years. The detenu has been detained by the second respondent by his order in BCDFGISSSV No.161/2022 dated 17.06.2022, holding him to be a "Goonda", as contemplated under Section 2(f) of Tamil Nadu Act 14 of 1982. The said order is under challenge in this Habeas Corpus Petition.

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H.C.P.No.1424 of 2022

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2. The main ground that was urged by the learned counsel for the petitioner is that the detaining authority was aware of the fact that the detenu had moved a bail application in the adverse case in Crime No.111/2022 and the same was dismissed. Insofar as the ground case in Crime No.112 of 2022 is concerned, no bail application was moved. However, the detaining authority had come to the conclusion that there is likelihood of the detenu coming out on bail by relying upon the order passed in CrI.M.P.Nos.18385 and 18431/2021. Learned counsel submitted that the order relied upon by the detaining authority is not a similar case. Hence, the detention order suffers from non-application of mind.

3. We have carefully gone through the order passed in CrI.M.P.Nos.18385 and 18431/2021, which was relied upon by the detaining authority to come to the conclusion that that there is likelihood of the detenu coming out on bail. That was a case where the co-accused was granted bail by the High Court and the accused therein had already suffered incarceration for nearly 80 days and investigation was almost completed. In view of the same, the order relied upon by the detaining authority cannot be held to be a similar case and hence, it reflects non-application of mind.



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H.C.P.No.1424 of 2022

In the result, the Habeas Corpus Petition is allowed and the order of detention in BCDFGISSSV No.161/2022 dated 17.06.2022 passed by the second respondent is set aside. The detenu viz., Karthikeyan S/o.Desinghu, aged 32 years, is directed to be released forthwith unless his detention is required in connection with any other case.

(P.N.P., J.) (N.A.V., J.)
10.01.2023

Index: Yes/No
gm

To

1.The Addl. Chief Secretary to Government,
(Home), Prohibition and Excise Department,
Secretariat, Fort St. George,
Chennai 600 009.

2.The Commissioner of Police,
Greater Chennai,
132, EVK Sampath Road,
Vepery, Chennai 600 007.

3.The Superintendent,
Central Prison,
Puzhal, Chennai 600 066.

4.The Director General of Police,
O/o Director General of Police,
Dr.Radha Krishnan Salai,
Mylapore, Chennai 600004.

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6. From the averments made and a perusal of the case file it is clear that the point on which the aforementioned HCP was allowed is available to the petitioner in the case on hand also. The sequitur is captioned HCP deserves to be allowed on the same point.

8. Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 17.06.2022 bearing reference BCDFGISSSV No.162 of 2022 made by the second respondent is set aside and the detenu Thiru.Yuvaraj, male, aged 26 years, Son of Thiru.Elumalai 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.)

24.04.2023

Index : Yes

Speaking

Neutral Citation : Yes

rsi

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



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- To
- 1.The Secretary to Government,
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 - 3.The Superintendent of Police,
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 - 4.The Inspector of Police (Law & Order),
D-2, Anna Salai Police Station,
Chennai.
 - 5.The Public Prosecutor,
High Court, Madras.



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H.C.P.No.148 of 2023

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

rsi

H.C.P.No.148 of 2023

24.04.2023