



H.C.P.No.276 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.276 of 2023

D.Bhavani

.. Petitioner

Vs.

1. State of Tamilnadu
Rep. By its Secretary to Government
Home, Prohibition and Excise Department
Secretariat, Fort St.George
Chennai – 600 009
 2. The Commissioner of Police, Greater Chennai
Commissioner Office, Greater Chennai
Veppery, Chennai – 600 007
 3. The Superintendent of Prisons
Central Prison, Puzhal II
Chennai District
Chennai – 600 066
 4. State by
The Inspector of Police
N-4, Fishing Harbour Police Station
Chennai – 600 013
- ..Respondents
Petition filed under Article 226 of the Constitution of India praying

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for issuance of a writ order or direction in the nature of WRIT OF HABEAS CORPUS, calling for the entire records in connection with the grounds of detention order in Memo No.19/BCDFGISSSV/2023 dated 12.01.2023, proposal made by the fourth respondent with the 2nd respondent and for the same the detention order passed by the second 2nd respondent, TPDA No.4061 dated 12.01.2023, against the said Desingu, male, aged 34 years, son of Kuppusamy, branded as Goonda to quash the same and direct the respondents to produce the body and person of the detenu before this Court and set him at liberty.

For Petitioner : Mr.T.Shanmuga Boopathi
for Mr.E.Balamurugan

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 23.02.2023, this Court made the following order:

'Captioned Habeas Corpus Petition has been filed in this Court on 15.02.2023 inter alia assailing a detention order dated 12.01.2023 bearing reference No.19/BCDFGISSSV/2023 made by 'second respondent' [hereinafter 'Detaining Authority' for the sake of convenience and clarity]. To be noted, fourth respondent is the



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Sponsoring Authority.

2. Wife of the detenu is the petitioner.

3. Mr.E.Balamurugan, 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 Section 174 of the 'Code of Criminal Procedure, 1973 (2 of 1974)' ['Cr.P.C'] altered to Section 302 of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] in Crime No.340 of 2022 on the file of N4, Fishing Harbour Police Station, Chennai.

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 there is a delay in 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..'



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2. The aforementioned order made in the 23.02.2023 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 two adverse cases and one ground case. The ground case which constitutes substantial part of substratum of the impugned preventive detention order is Crime No.340 of 2022 on the file of N4 Fishing Harbour Police Station for an alleged offence under Section 174 Cr.P.C altered to Section 302 IPC. 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.T.Shanmuga Boopathi, 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 there is delay in passing the impugned preventive detention order was urged but in the final hearing today, learned counsel posited his argument on the point that subjective satisfaction arrived at by the Detaining



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Authority as regards imminent possibility of detenu being enlarged on bail is impaired. Learned counsel adverting to the grounds of detention qua impugned preventive detention order and the grounds booklet submitted that Detaining Authority has relied on an order dated 26.05.2021 made in Cr.M.P.No.10485 of 2021 by I Additional Sessions Judge at Chennai [we shall refer to this case as 'Balaji's case' for the sake of convenience] for arriving at the subjective satisfaction. We had the benefit of perusing the Balaji's case bail order which is at Page 207 of the grounds booklet. A careful perusal of Balaji's case bail order brings to light that the learned Magistrate has granted bail primarily owing to Covid-19 pandemic situation. Covid-19 pandemic situation is from 15.03.2020 to 28.02.2022 as per the orders of Hon'ble Supreme Court in *Suo Motu* Writ Petition (C) No.3 of 2020. The relevant portion in Balaji's case bail order reads as follows:

'5. The petitioners have been in custody for the past 75 days. No previous case is reported as against the petitioners. Considering the duration of custody and stage of the case and existing Covid 19 situation, this Court is inclined to grant bail to the petitioners subject to condition.'

6. Suffice to say that subjective satisfaction as regards imminent possibility of detenu being enlarged on bail arrived at by relying on a bail order which in turn has incorrectly applied the Covid-19 situation, has



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impaired the subjective satisfaction. The sequitur is, impugned preventive detention order deserves to be dislodged.

7. Apropos, the sequitur is, captioned HCP is allowed. Impugned detention order dated 12.01.2023 bearing reference No.19/BCDFGISSSV/2023 made by the second respondent is set aside and the detenu Thiru.Desingu, aged 34 years, son of Thiru.Kuppusamy, 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

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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1. The Secretary to Government
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2. The Commissioner of Police, Greater Chennai
Commissioner Office, Greater Chennai
Veppery, Chennai – 600 007
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5. The Public Prosecutor
High Court, Madras.



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and
R.SAKTHIVEL, J.,

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