



WEB COPY



H.C.P.No.290 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.06.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

and

THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

H.C.P.No.290 of 2023

Gowri
W/o.Sankar

.. Petitioner/
Mother of the detenu

Vs.

1. The Additional Chief Secretary to Government
Home, Prohibition and Excise Department
Secretariat, Government of Tamil Nadu
Fort St.George, Chennai – 600 009
2. The Commissioner of Police
Chennai City
3. The Superintendent
Central Prison II
Puzhal
Chennai
4. The Inspector of Police,
K-10, Koyambedu Police Station
Chennai

..Respondents

Page Nos.1/9



H.C.P.No.290 of 2023

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 records pertaining to the order of detention dated 17.12.2022 passed by the second respondent in No.470/BCDFGISSSV/2022 and quash the same as illegal and direct the respondent to produce the detenu Kamalesh, son of Sankar, male aged about 21 years now confined at Central Prison – II, Puzhal, Chennai before this Court and set him at liberty.

For Petitioner : Mr.S.Senthil Kumar

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 27.02.2023, this Court made the following order:

"Captioned Habeas Corpus Petition has been filed in this Court on 20.02.2023 inter alia assailing a detention order



WEB COPY



H.C.P.No.290 of 2023

dated 17.12.2022 bearing reference No.470/BCDFGISSSV/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.S.Senthil Kumar, 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 294(b), 341, 392, 336, 427 and 506(ii) of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] in Crime No.398 of 2022 on the file of K-10 Koyambedu 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 Detaining Authority has not properly intimated to the family members of the detenu about his detention.



WEB COPY



H.C.P.No.290 of 2023

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.'*

2. The aforementioned order made in the 27.02.2023 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 four adverse cases and one ground case. The ground case which constitutes substantial part of substratum of the impugned preventive detention order is Crime No.398 of 2022 on the file of K-10 Koyambedu Police Station for alleged offences under Sections 294(b), 341, 392, 336, 427 and 506(ii) of 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.



H.C.P.No.290 of 2023

4. Mr.S.Senthil Kumar, learned counsel on record for petitioner and Mr.E.Raj Thilak, learned State Additional Public Prosecutor for all respondents are before us.

5. Though at the time of admission board the point that the Detaining Authority has not properly intimated the family members about the detention was urged but in the final hearing today, learned counsel for petitioner adverting to the grounds of impugned preventive detention order and more particularly paragraph 4 thereof submits that subjective satisfaction arrived at by the Detaining Authority qua the imminent possibility of detenu being enlarged on bail is flawed. Learned counsel drew our attention to portion of paragraph 4 which reads as follows:

'Further, in a similar case registered u/s 341,294(b), 336, 324, 392, 427, 397 and 506(ii) IPC in R-6 Kumaran Nagar Police Station in Cr.No.527/2021, the bail was granted to the some other accused by the Court of the learned Principal Sessions Judge at Chennai in Crl.M.P.No.19198 of 2021. Hence, I infer that there is a real possibility of his coming out on bail by filing bail application for K-10



WEB COPY



H.C.P.No.290 of 2023

Koyambedu Police Station Crime in Nos.398/2022 and 399/2022 before the appropriate court, since, in similarly placed cases, the bail was granted by the courts, after a lapse of time.'

6. We had the benefit of perusing the aforementioned bail order [we shall refer to the same as 'Ashok's case' as Ashok is the petitioner therein]. In Ashok's case bail order paragraph 5 reads as follows:

'5. According to CPP, the petitioner is having one previous case. Injured was discharged from the hospital.'

7. Adverting to the aforementioned paragraph 5 of Ashok's case bail order, learned counsel for petitioner submits that even according to the impugned preventive detention order, there are as many as four adverse cases in the case on hand and therefore, the comparison is bad. Learned counsel also points out that Ashok's case is one where injured has been discharged whereas the situation is different in the case on hand. Therefore, we have no hesitation in accepting the submission that subjective satisfaction arrived at by the



H.C.P.No.290 of 2023

Detaining Authority is impaired. The sequitur is, impugned preventive detention order deserves to be dislodged.

8. Apropos, the sequitur is, captioned HCP is allowed. Impugned detention order dated 17.12.2022 bearing reference 470/BCDFGISSSV/2022 made by the second respondent is set aside and the detenu Thiru.Kamalesh, aged about 21, son of Thiru.Sankar, 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.)
28.06.2023

Index : Yes
Speaking
Neutral Citation : Yes
gpa

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



H.C.P.No.290 of 2023

To

WEB COPY

1. The Additional Chief Secretary to Government
Home, Prohibition and Excise Department
Secretariat, Government of Tamil Nadu
Fort St.George, Chennai – 600 009
2. The Commissioner of Police
Chennai City
3. The Superintendent
Central Prison II
Puzhal
Chennai
4. The Inspector of Police,
K-10, Koyambedu Police Station
Chennai
5. The Public Prosecutor
High Court, Madras.



WEB COPY



H.C.P.No.290 of 2023

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

gpa

H.C.P.No.290 of 2023

28.06.2023

Page Nos.9/9