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HCP No.497 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.02.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

and

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

H.C.P.No.497 of 2022

Smt.Meera

W/o.Karthikeyan

..

Petitioner

Vs.

1. The Secretary to the Government
Home, Prohibition & Excise Department
Secretariat
Chennai – 600 009
2. The District Collector and District Magistrate
of Kancheepuram
Kancheepuram District
Kancheepuram
3. The Superintendent of Police
Kancheepuram
Kancheepuram District
4. The Superintendent
Central Prison
Coimbatore

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5. State Rep. By
The Inspector of Police
Siva Kanchi Police Station
Kancheepuram District

.. Respondents

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 2nd respondent dated 17.03.2022 in Memo B.C.D.F.G.I.S.S.S.V.No.11 of 2022 against the petitioner's son Mr.Dhinesh @ Dhinesh Kumar, M/42 years, son of Karthikeyan, who is confined at Central Prison, Coimbatore and set aside the same and consequently direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner : Mr.V.Parthiban
for Mr.A.Saranraj

For Respondents : Mr.R.Muniyapparaj
Additional Public Prosecutor

ORDER

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

This order will now dispose of the 'Captioned 'Habeas Corpus Petition'
[hereinafter 'HCP' for the sake of brevity and convenience].



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2. Today, Mr.V.Parthiban, learned counsel appearing on behalf of Mr.A.Saranraj, counsel on record for the petitioner and Mr.R.Muniyapparaj, learned Additional Public Prosecutor on behalf of the respondents are before us.

3. This order has to be read in conjunction with and in continuation of earlier proceedings made in the previous listings on 24.01.2023, 30.01.2023 and 02.02.2023, which read as follows:

'Proceedings made on 24.01.2023

Learned State Additional Public Prosecutor [State of Tamil Nadu] has filed a counter affidavit but a copy of the same has not been furnished to the learned counsel for petitioner. The same has been done today.

2. Learned counsel for the petitioner requests for time to peruse the same and advance arguments. Request acceded to.

3. List on Friday i.e., 27.01.2023.'

'Proceedings dated 30.01.2023

Mr.V.Parthiban, learned counsel appearing on behalf of the counsel on record for petitioner in his campaign against the impugned detention order raised three main points and they are as follows:

(i) similar case is on a different footing as that was a case where there was no antecedents for the



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accused, as a extension of this argument, learned counsel submitted that there is non-application of mind;

(ii) in three adverse cases, the detenu was remanded to judicial custody and was incarcerated but detention order does not take into account this incarceration while coming to the conclusion that there is imminent possibility of the detenu being enlarged on bail;

(iii) arrest memo has been given to the jail authorities in the three adverse cases.

2. Learned Additional Public Prosecutor requested for a short accommodation to get instructions inter alia as regards the similar case. Request acceded to.

List on 02.02.2023 (Thursday).'

Proceedings dated 02.02.2023

Read this in conjunction with and in continuation of earlier proceedings made in the previous listing on 30.01.2023.

2. Mr.V.Parthiban, learned counsel appearing on behalf of counsel on record for petitioner and Mr.R.Muniyapparaj, learned State Additional Public Prosecutor are before us.

3. Continuing with his submissions (as captured in 30.01.2023 proceedings), learned counsel for petitioner submitted that the impugned detention has been clamped only to gain more



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time for investigation in the three adverse cases. To be noted, the adverse cases are i) Crime No.1642 of 2021 for alleged offences qua sections 147, 148, 449, 294(b), 307, 302, 506(ii), 120B of IPC and 3 & 5 of the Explosive Substances Act, 1908, (ii) Crime No.1835 of 2021 for alleged offences under Sections 147, 148, 448, 427, 324, 307, 506(ii), 452, 397, 120B of IPC and (iii) Crime No.1863 of 2021 for alleged offences qua Sections 294(b), 324, 383, 307, 506(ii), 120B of IPC, all on the file of Siva Kanchi Police Station in Kanchipuram District. Learned counsel advertng to paragraph 5 of the detention order (to be noted, paragraph 5 is in three parts and we are concerned with 2nd part and first sentence in third part) submitted that after referring to the ground case it is stated that there is a real possibility of the detenu being released on bail, but no bail application has been filed.

4. Responding to the above argument, learned Additional Public Prosecutor submitted that as regards the ground case (Crime No.85 of 2022) on the file of Siva Kanchi Police Station, the detenu surrendered on 07.02.2022 and a charge sheet has been filed within the statutorily prescribed time on 18.04.2022 vide P.R.C.No.20 of 2022 on the file of Judicial Magistrate, Kanchipuram. However, as regards the three adverse cases, learned Additional Public Prosecutor requested for a short accommodation to get instructions on the dates on which the charge sheets were filed. Request acceded to.

5. List one week hence. List on 09.02.2023'



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4. Adverting to 02.02.2023 proceedings, more particularly paragraph 4 thereat, learned Additional Public Prosecutor submits that as regards the three adverse cases, charge sheet is yet to be filed in the first adverse case i.e., Crime No.1642 of 2021 on the file of Siva Kanchi Police Station and as regards second and third adverse cases, charge sheets have been filed on 21.11.2022 and 18.07.2022 respectively.

5. As regards three points raised by learned counsel for petitioner, as captured in the aforementioned 30.01.2023 proceedings, we are not inclined to accept points 2 and 3 as second point does not affect the subjective satisfaction and as regards third point, arrest memo has been given to the jail authorities in whose custody the detenu was.

6. As regards the first point i.e., similar case, we find that the similar case referred to in the impugned detention order is as follows:

'In Siva Kanchi Police Station Crime No.85 of 2022 u/s.341, 294(b), 323, 324, 506(ii), 307 of IPC accused Thiru.Senthilkumar S/o.Kanniyiram was released on bail through Hon'ble District and Sessions Court – II, Kancheepuram in Crl.M.P.No.224/2022 on 17.02.2022'.

7. In the grounds given to the detenu, similar case bail order is at pages 392 to 397 of the booklet. A careful perusal of paragraph 7 of the



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similar case bail order brings to light that there was no bad antecedents (even according to the prosecution) and that has weighed in the mind of the Court in granting bail. In the case on hand, the prosecution does not say the same about the detenu. Therefore, we accept the similar case point. We accept that the comparing of what according to detaining authority is similar case with that of the detenu's possibility of getting bail tantamounts to comparing Apples and Oranges. Therefore, the subjective satisfaction is afflicted by the vice of non-application of mind.

8. The second point turns on delay in considering the representation.

9. Learned counsel submitted that there is delay in considering the petitioner's representation dated 23.03.2022. In response to this, learned Additional Public Prosecutor has placed before us a chronicle, details of which is as follows:



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1. Representation dated	26.03.2022
2. Representation considered	26.03.2022
3. Remand call on	26.03.2022
4. Remand call	—
5. Remand received on	27.04.2022
6. File considered on	27.04.2022
7. Under Secretary dealt with on	27.04.2022
8. Deputy Secretary dealt with on	28.04.2022
9. Minister dealt with and file received on	29.04.2022
10. Referred after consideration	29.04.2022
11. Referred after consideration	29.04.2022

Govt. Order/Reply on: 26.03.2022, 27.03.2022, 02.04.2022, 03.04.2022, 05.04.2022, 06.04.2022, 07.04.2022.

S.No	Representation	Column 7 to 9	Column 12 to 13
1.	No of days	12	03
2.	No of delay	14	02
	Total delay days	26	05
		Total 12 days delay	

10. The aforesaid chronicle makes it clear that 10 days delay in considering the representation remains unexplained. Therefore, we have no difficulty in accepting delay in considering the representation point also. Delay in considering the representation is clearly an infraction of constitutional safeguard ingrained in Clause (5) of Article 22 of the Constitution of India.

11. As we accept the aforementioned two points in petitioner's campaign against the impugned detention order, impugned detention order dated 17.03.2022 bearing reference B.C.D.F.G.I.S.S.S.V.No.11 of 2022 made by the second respondent is set aside and detenu Mr.Dhinesh @



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Dhineshkumar, male, aged 42 years, son of Mr. Karthikeyan, now detained in Central Prison, Coimbatore is directed to be set at liberty forthwith unless required in connection with any other case/s.

Captioned HCP ordered on above terms.

(M.S.,J.)

(M.N.K.,J.)

Index: Yes

13.02.2023

Neutral Citation : Yes

gpa

P.S: Registry to forthwith communicate this order to jail authorities in Central Prison, Coimbatore

To

1. The Secretary to the Government
Home, Prohibition & Excise Department
Secretariat
Chennai – 600 009
2. The District Collector and District Magistrate
of Kancheepuram
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6.

The Public Prosecutor
Madras High Court

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

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