



WEB COPY



H.C.P.No.524 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.07.2023

Coram

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

H.C.P.No.524 of 2023

Desappan

.. Petitioner

VS

1.The State of Tamil Nadu rep. By its
Additional Chief Secretary to Government,
Home, Department of Prohibition & Excise,
Secretariat, Fort St.George, Chennai – 600 009.

2.The Commissioner of Police,
Chennai City Police, Greater Chennai,
Commissioner Office, Vepery,
Chennai – 7.

3.The Inspector of Police,
N-4 Fishing Harbour Police Station,
Chennai.

4.The Superintendent of Prison,
Central Prison II, Puzhal, Chennai.

.. 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 No.18/BCDFGISSSV/2023 dated 12.01.2023 on the file of the second respondent herein and set aside the same as illegal and produce the detenu Gugan @ Bhuvan @ Bhuvaneswaran, son of Desappan, aged 31 years, now confined at Central Prison, Puzhal, Chennai before this Court and set him at liberty.



WEB COPY



H.C.P.No.524 of 2023

For Petitioner : Mr.Ilayaraja Kandasamy
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 06.04.2023, this Court made the following order:

'Captioned Habeas Corpus Petition has been filed in this Court on 29.03.2023 inter alia assailing a detention order dated 12.01.2023 bearing reference No.18/BCDFGISSSV/2022 made by 'second respondent' [hereinafter 'Detaining Authority' for the sake of convenience and clarity]. To be noted, third respondent is the Sponsoring Authority.

2. Father of the detenu is the petitioner.

3. Learned counsel for petitioner submits that ground case qua the detenu is for an alleged offence under Section 174 of 'The Code of Criminal Procedure, 1973 (2 of 1974)' [hereinafter 'Cr.PC' for the sake of convenience and clarity] and subsequently, altered into 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.

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



H.C.P.No.524 of 2023

WEB COPY

14 of 1982' for the sake of convenience and clarity].

5. The detention order has been assailed inter alia on the ground that several documents in the grounds of booklet furnished to the detenu are only in English version which prevented the detenu to make 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. List the captioned Habeas Corpus Petition accordingly.'

2. The aforementioned order made in the 06.04.2023 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. 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 under Section 174 Cr.P.C. Subsequently altered into one under Section 302 IPC. Owing to the nature of the challenge to the impugned preventive detention order, it is not necessary to delve more into the factual matrix or be detained further by facts.



H.C.P.No.524 of 2023

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

5. As would be evident from the aforementioned 06.04.2023 order (more particularly paragraph 5 thereat) at the time of admission, learned counsel projected the point that several documents in the grounds booklet furnished to the detenu are only in English, which prevented the detenu from making an effective representation, however, in the final hearing today, learned counsel for petitioner predicated his campaign against the impugned preventive detention order on one point which turns on subjective satisfaction arrived at by the Detaining Authority qua imminent possibility of the detenu being enlarged on bail. Elaborating on this submission, learned counsel drew our attention to a portion of paragraph 4 of the grounds of impugned preventive detention order which reads as follows:

'4.....In a similar case registered u/s 147, 148, 449, 324, 302 IPC in R3 Ashok Nagar Police Station Cr.No.59/2021, the bail was granted by the learned Principal Sessions Court, Chennai in CrI.M.P.No.10485/2021. Hence, I infer that there is a real possibility of his coming out on bail by filing bail application in N4 Fishing Harbour Police Station in



WEB COPY



H.C.P.No.524 of 2023

Cr.No.340/2022 before the appropriate court, since in a similar case, the bail was granted by the court after a lapse of time.....'

6. Learned counsel submitted that such subjective satisfaction has been arrived at by the Detaining Authority by relying on Balaji's case bail order being bail order dated 26.05.2021 in Crime No.59 of 2021 on the file of R-3 Ashok Nagar Police Station. A careful perusal of Balaji's case bail order, more particularly paragraph 5 thereat brings to light that the then prevailing Covid-19 situation had weighed in the minds of the learned Sessions Judge in granting bail. Paragraph 5 of 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.'

7. Covid - 19 situation in legal parlance is from 15.03.2020 to 28.02.2022 vide orders of Hon'ble Supreme Court in *Suo Motu* Writ Petition (C) No.3 of 2020 wherein limitation across the Board was extended and therefore, Balaji's case would not apply to the



H.C.P.No.524 of 2023

case on hand as the impugned preventive detention order has been made on 12.01.2023, which means that the impugned preventive detention order deserves to be dislodged.

8. Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 12.01.2023 bearing reference No.18/BCDFGISSSV/2023 made by the second respondent is set aside and the detenu Thiru.Gugan @ Bhuvan @ Bhuvaneswaran, aged 31 years, son of Thiru.Desappan, 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.)
31.07.2023

Index : Yes
Neutral Citation : Yes
mmi

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

To

- 1.The Additional Chief Secretary to Government,
Home, Department of Prohibition & Excise,
Secretariat, Fort St.George, Chennai – 600 009.
- 2.The Commissioner of Police,
Chennai City Police, Greater Chennai,
Commissioner Office, Vepery,
Chennai – 7.



H.C.P.No.524 of 2023

WEB COPY

- 3.The Inspector of Police,
N-4 Fishing Harbour Police Station,
Chennai.
- 4.The Superintendent of Prison,
Central Prison II, Puzhal, Chennai.
- 5.The Public Prosecutor,
High Court, Madras.



WEB COPY



H.C.P.No.524 of 2023



WEB COPY



H.C.P.No.524 of 2023

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

mmi

H.C.P.No.524 of 2023

31.07.2023