



H.C.P.No.923 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 03.01.2023

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH
AND
THE HONOURABLE Mr.JUSTICE N.ANAND VENKATESH

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Malarkodi

.. Petitioner

Vs.

1.The Secretary to the Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai-600 009.

2.The Commissioner of Police,
Greater Chennai.

3.The Superintendent of Prison,
Central Prison, Puzhal,
Chennai-66.

4.The Inspector of Police, L & O,
D-4, Zam Bazaar Police Station,
Chennai.

.. Respondents



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Petition filed under Article 226 of the Constitution of India, praying to

issue a WRIT OF HABEAS CORPUS to call for the records in connection with the order of detention passed by the second respondent dated 02.05.2022 in Memo BCDFGISSSV No.99/2022 against the petitioner's son Balaji, aged 25 years, S/o.Sekar @ Thotta Sekar, who is confined at the 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.S.Senthilvel

For Respondents : Mr.R.Muniyapparaj
Additional Public Prosecutor

ORDER

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

The petitioner is the mother of the detenu viz., Balaji, aged 25 years, S/o.Sekar @ Thotta Sekar. The detenu has been detained by the 2nd respondent by his order in BCDFGISSSV No.99/2022 dated 02.05.2022, 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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2. We have heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the respondents.

We have also perused the records produced by the Detaining Authority.

3. The learned counsel for the petitioner apart from raising several grounds, mainly focused his argument on the similar order that was relied upon by the detaining authority. He further submitted that the detaining authority was aware of the fact that there were two adverse cases and one ground case against the detenu and he was also aware of the fact that the detenu did not move any bail application insofar as Crime No.23 of 2022 is concerned and insofar as Crime No.45 of 2022 is concerned, the bail application that was moved by the detenu was dismissed on 28.04.2022. Hence, no bail application was pending in these two crime numbers on the date when the detention order was passed. In spite of the same, the detaining authority came to a conclusion that there is likelihood of the detenu being let out on bail by relying upon the orders passed in CrI.M.P.No.21605 of 2019 and CrI.M.P.No.6184 of 2018. Further, he submitted that both the orders that were relied upon by the detaining authority cannot be said to be similar



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cases and hence, the detention order suffers from non-application of mind.

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4. The learned Additional Public Prosecutor strongly opposed the habeas corpus petition by filing his counter.

5. We have carefully considered the orders relied upon by the detaining authority in CrI.M.P.No.21605 of 2019 and CrI.M.P.No.6184 of 2018. Insofar as the order passed in CrI.M.P.No.21605 of 2019, that was a case, where, the accused therein did not have any bad antecedents and the accused had already suffered incarceration for nearly 43 days and hence, the Principal Sessions Judge, Chennai, granted bail to the accused therein. This order was relied upon insofar as one of the adverse case in Crime No.23 of 2022, where, the detenu had not moved any bail application. This order cannot be considered to be a similar case for the simple reason that the detenu in that case has no previous bad antecedents and hence, the order relied upon is not a similar case. Insofar as the second order that was relied upon by the detaining authority in CrI.M.P.No.6184 of 2018 is concerned, that was a case, where, the accused therein was arrested for the alleged



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offences under Sections 341, 294(b), 323, 336, 427, 307 and 506(II) IPC and the accused had suffered incarceration for nearly 21 days. In the present case, the ground case in Crime No.45 of 2022 was registered against the detenu for the alleged offences under Sections 294(b), 341, 323, 384, 336, 307, 427 and 506(II) IPC. In the case that was relied on, the attack was made by the accused therein due to previous enmity, whereas, in the case in hand, the detenu is said to have threatened the complainant and had demanded money from him and that is the reason why the case has been registered specifically under Section 384 IPC.

6. In the considered view of this Court, the order that was relied upon by the detaining authority is not a similar case as that of the ground case that is available on hand. In view of the same, the detention order suffers from non-application of mind. The impugned detention order is therefore liable to be quashed.

In the result, the Habeas Corpus Petition is allowed and the order of



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detention in BCDFGISSSV No.99/2022 dated 02.05.2022, passed by the second respondent is set aside. The detenu viz., Balaji, aged 25 years, S/o.Sekar @ Thotta Sekar, is directed to be released forthwith, unless his detention is required in connection with any other case.

J.]

nsd

[P.N.P., J.]

[N.A.V.,

03.01.2023



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To

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1.The Secretary to the Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai-600 009.

2.The Commissioner of Police,
Greater Chennai.

3.The Superintendent of Prison,
Central Prison, Puzhal,
Chennai-66.

4.The Superintendent of Prison,
Central Prison, Cuddalore.

5.The Inspector of Police, L & O,
D-4, Zam Bazaar Police Station,
Chennai.

6.The Joint Secretary to Government,
Public, Law and Order Department,
Secretariat, Chennai-9.

7.The Public Prosecutor,
High Court, Madras.



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P.N.PRAKASH, J.
AND
N.ANAND VENKATESH, J.

nsd

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