



WEB COPY



H.C.P.No.755 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.07.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

H.C.P.No.755 of 2023

Meena
W/o.Gunasekaran

.. Petitioner/
Mother of the detenu

Vs.

1. The State of Tamil Nadu represented by
The Principal Secretary to Government
Home, Prohibition and Excise Department
Fort St. George, Chennai – 600 009
2. The Commissioner of Police
Tambaram City
Chennai – 600 119
3. The Superintendent
Central Prison, Puzhal
Chennai – 600 066
4. The Inspector of Police
T-14, Pallikaranai Police Station
Chennai District

..Respondents



H.C.P.No.755 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, calling for the entire records connected with the impugned order of detention passed by the 2nd respondent in Memo No.215/BCDFGISSSV/2022 dated 23.12.2022 and quash the same and consequently directing the respondents to produce the detenu, namely the petitioner's son Sathishkumar@ Sathish, son of Gunasekaran, aged about 26 years, detained in Central Prison, Puzhal, Chennai before this Court and set him at liberty..

For Petitioner : Mr.G.Balamanikandan
For Respondents : Mr.E.Raj Thilak
Additional Public Prosecutor

ORDER

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

Captioned 'Habeas Corpus Petition' ['HCP' for the sake of brevity] has been filed by mother of detenu assailing a 'preventive detention order dated 23.12.2022 bearing reference 215/BCDFGISSSV/2022' [hereinafter 'impugned detention order' for the sake of convenience and brevity]. To be noted, fourth respondent is the sponsoring authority and second respondent is the detaining authority as impugned detention order has been made by second respondent.

Page Nos.2/8



H.C.P.No.755 of 2023

2. Impugned detention order has been made under '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] on the premise that the detenue is a 'Goonda' within the meaning of Section 2(f) of Act 14 of 1982.

3. There are three adverse cases and one ground case. The ground case which constitutes substantial part of substratum of the impugned preventive detention order is Crime No.1085 of 2022 on the file of T-14 Pallikaranai Police Station for alleged offences 341, 294(b), 336, 427, 397 and 506(ii) of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity]. Owing to the nature of the challenge to the impugned detention order, it is not necessary to delve into the factual matrix or be detained further by facts.



H.C.P.No.755 of 2023

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

5. In the support affidavit qua captioned HCP several points have been raised / urged but in the final hearing Mr.G.Balamanikandan, learned counsel for petitioner predicated his campaign against the impugned preventive detention order on the point that subjective satisfaction arrived at by the Detaining Authority as regards imminent possibility of detenu being enlarged on bail is impaired. Elaborating his submission in this direction, learned counsel drew our attention to a portion of paragraph 4 of grounds of impugned preventive detention order and that portion reads as follows:

'4..... In a similar case registered at G-3 Kilpauk Police Station Cr.No.275/2019, under Sections 341, 294(b), 323, 336, 397, 427 and 506(ii) IPC, bail was granted to the accused Thiru.Arun @ Arunkumar by the Court of Principal Sessions, Chennai, in CrI.M.P.No.21605/2019. Hence, I infer that it is very likely of his coming out on bail in T-14, Pallikaranai Police Station Crime Nos.1067/2022, 1078/2022 and 1085/2022 cases, since, in similarly placed cases, bail was granted by the courts after a lapse



H.C.P.No.755 of 2023

WEB COPY

of time '

6. Learned counsel submitted that the aforementioned order in CrI.M.P.No.21605 of 2019 has been furnished to the detenu as part of the grounds booklet and the order is at pages 533 and 535. This order will now be referred to as Arun's bail order as one Arun @ Arun Kumar is the petitioner. A portion of paragraph 4 of this Arun's bail order reads as follows:

'4.....However, according to her, the petitioner has no bad antecedents'

7. Learned counsel submitted that Arun's bail order is one where the learned Sessions Judge gravitated towards granting discretionary relief of bail as there was no bad antecedents qua Arun whereas in the case on hand even according to the impugned preventive detention order, allegedly there are as many as three adverse cases. This means that comparison of the case on hand with Arun's bail order for arriving at aforementioned subjective satisfaction is impaired is learned counsel's say.



H.C.P.No.755 of 2023

8. In response to the aforementioned argument, learned Prosecutor submitted that alleged offences in Arun's case and the case on hand are broadly comparable.

9. This Court has repeatedly held that it is not just comparison of offences but it is also comparison of determinants/parameters for grant of bail. In the case on hand, we find that determinants/parameters are different as there were no bad antecedents qua Arun's bail order whereas in the case on hand as many as three adverse cases qua detenu even according to the impugned preventive detention order. This means that the comparison is flawed. If the comparison is flawed it leads to the conclusion that the impugned preventive detention deserves to be dislodged.

10. Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 23.12.2022 bearing reference 215/BCDFGISSSV/2022 made by the second respondent is set aside and the detenu Thiru.Sathishkumar @ Sathish, aged 26 years, son of Thiru.Gunasekaran is directed to be set at liberty forthwith, if not required in



H.C.P.No.755 of 2023

connection with any other case / cases. There shall be no order as to costs.

WEB COPY

(M.S.,J.)

(R.S.V.,J.)

03.07.2023

Index : Yes / No

Neutral Citation : Yes / No

gpa

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

To

1. The Principal Secretary to Government
Home, Prohibition and Excise Department
Fort St. George, Chennai – 600 009
2. The Commissioner of Police
Tambaram City
Chennai – 600 119
3. The Superintendent
Central Prison, Puzhal
Chennai – 600 066
4. The Inspector of Police
T-14, Pallikaranai Police Station
Chennai District
5. The Public Prosecutor
High Court, Madras.



WEB COPY



H.C.P.No.755 of 2023

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

gpa

H.C.P.No.755 of 2023

03.07.2023

Page Nos.8/8