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H.C.P.No.977 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.08.2023

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

H.C.P.No.977 of 2023

Boologa Ramba

.. Petitioner

Vs

1. The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai -9.
2. The Commissioner of Police,
Greater Chennai.
- 3.The Superintendent,
Central Prison, Puzhal, Chennai – 66.
- 4.The Inspector of Police,
Law and Order,
P-2 Otteri Police Station, 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.42/BCDFGISSSV/2023 dated 15.02.2023 on the file of second respondent, quash the detention order dated 15.02.2023 and to direct the production of detenu Eli @ Kamalakannan, aged 22 years, presently detained at Central Prison, Puzhal, Chennai as a Goonda under Section 2(f) of Tamil Nadu Act 14/1982 before this Court and set him at liberty.

Page Nos.1/8



WEB COPY



H.C.P.No.977 of 2023

For Petitioner : Mr.L.Ram 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 09.06.2023, the following order was made:

H.C.P.No.977 of 2023
M.SUNDAR, J.,
and
K.GOVINDARAJAN THILAKAVADI, J.,

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

Captioned Habeas Corpus Petition has been filed in this Court on 28.04.2023 inter alia assailing a detention order dated 15.02.2023 bearing reference 42/BCDFGISSSV/2023 made by 'second respondent' [hereinafter 'Detaining Authority' for the sake of convenience and clarity]. To be noted, fourth respondent is the Sponsoring Authority.

2. To be noted, mother of the detenu is the petitioner.

3. Mr.L.Ram 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 341, 294(b), 394, 397 and 506(ii) read with Section 34 of 'Indian Penal Code, 1860 (Act 45 of 1860)' ['IPC' for brevity] in Crime No.29 of 2023 on the file of P-2 Otteri 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-



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H.C.P.No.977 of 2023

offenders, Goondas, Immoral traffic offenders, Sandoffenders, 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 subjective satisfaction arrived at by the Detaining Authority that there is imminent possibility of the detenu being enlarged on bail is without any material.

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 Admission Board captures all essentials that are imperative for appreciating this order and therefore, we are not setting out the same again. However, short forms, short references and abbreviations used in the Admission Board order will continue to be used in the instant order also for the sake of brevity, convenience and clarity.

3. Mr.L.Ram Kumar, learned counsel on record for petitioner and Mr.E.Raj Thilak, learned Additional Public Prosecutor for all the respondents are before us.

4. To be noted, 'order dated 15.02.2023 bearing reference



H.C.P.No.977 of 2023

No.42/BCDFGISSSV/2023' made by second respondent / Detaining Authority shall in this order be referred to as 'impugned preventive detention order' for the sake of convenience and clarity.

5. As would be evident from paragraph 5 of the Admission Board order, at the time of admission, learned counsel for petitioner predicated his challenge to the impugned preventive detention order on the point that subjective satisfaction arrived at by the Detaining Authority that there is imminent possibility of the detenu being enlarged on bail is without any material.

6. Elaborating on this point, Mr.L.Ram Kumar, learned counsel for petitioner took us through the impugned preventive detention order and more particularly grounds of impugned preventive detention order and submitted that the detaining authority has relied on inputs from the sponsoring authority for arriving at subjective satisfaction as regards imminent possibility of detenu being enlarged on bail. In this regard, the grounds booklet supplied to the detenu contains statement recorded under Section 161(3) of 'The Code of Criminal Procedure, 1973 (2 of 1974)' [hereinafter 'Cr.P.C.' for the sake of brevity and clarity] from detenu's mother and special report



H.C.P.No.977 of 2023

from the sponsoring authority which has been signed by the sponsoring authority on 14.02.2023.

7. Learned counsel submits that as regards Section 161(3) Cr.P.C. Statement, the date on which it is recorded has not been mentioned and therefore the impugned preventive detention order is vitiated.

8. The aforementioned point turns heavily on records before this Court and therefore the learned Prosecutor does not really have much of a say.

9. To be noted, we had the benefit of perusing the grounds booklet and we found that Section 161(3) statement of detenu's mother does not contain a date. Therefore, it is not clear as to whether the statement was recorded before or after the impugned preventive detention order was made by the detaining authority. In such circumstances, the benefit of doubt has to be given to the detenu. In this view of the matter, we have no difficulty in accepting and sustaining the argument of learned counsel for petitioner that subjective satisfaction arrived at by the detaining authority as regards the imminent possibility of detenu being enlarged on bail is



H.C.P.No.977 of 2023

impaired. The sequitur is, impugned preventive detention order gets vitiated and the same is liable to be dislodged.

10. Ergo, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 15.02.2023 bearing reference No.42/BCDFGISSSV/2023 made by the second respondent is set aside and the detenu Thiru.Eli @ Kamalakannan, aged 22 years, Son of Thiru.Kumaresan, 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.)
14.08.2023

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 Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai -9.
2. The Commissioner of Police,
Greater Chennai.

Page Nos.6/8



H.C.P.No.977 of 2023

3.The Superintendent,
Central Prison, Puzhal, Chennai – 66.

4.The Inspector of Police,
Law and Order,
P-2 Otteri Police Station,
Chennai.

5.The Public Prosecutor,
High Court, Madras.



WEB COPY



H.C.P.No.977 of 2023

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

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H.C.P.No.977 of 2023

14.08.2023

Page Nos.8/8