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H.C.P.No.765 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.09.2023

CORAM

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

H.C.P.No.765 of 2023

Lakshmi

.. Petitioner

Vs

1. The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Fort St. George, Chennai -9.
2. The Commissioner of Police/Detaining Authority,
Tiruppur City, Tiruppur District.
- 3.The Superintendent of Prison,
Central Prison, Coimbatore,
Coimbatore District.
- 4.State rep. By its
The Inspector of Police,
Tiruppur North Police Station,
Tiruppur 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 relating to the petitioner's son detention under Tamil Nadu Act 14 of 1982 vide detention order dated 16.03.2023 on the file of the second respondent made in proceedings Memo C.No.13/G/IS/Tiruppur

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City/2023, quash the same as illegal and consequently direct the respondents herein to produce the petitioner's son namely Vallarasu, S/o.Manikandan, aged 22 years before this Court and set the petitioner's son at liberty from detention, now the petitioner's son detained at Central Prison, Coimbatore.

For Petitioner : Mr.W.Camyles Gandhi
For Respondents : Mr.E.Raj Thilak
Additional Public Prosecutor

ORDER

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

In the captioned 'Habeas Corpus Petition' (hereinafter 'HCP' for the sake of brevity, convenience and clarity) the detenu Thiru.Vallarasu, son of Thiru.Manikandan has been detained as a preventive detention detenu pursuant to an order dated 16.03.2023 bearing reference made by the second respondent branding the detenu as a 'Goonda' within the meaning of 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, Slumgrabbers and Video Pirates Act, 1982 (Tamil Nadu Act No.14 of 1982)' [hereinafter 'Act 14 of 1982' for the sake of convenience and clarity]. This 16.03.2023



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order made by the second respondent shall be referred to as 'impugned preventive detention order' and the second respondent shall be referred to as 'detaining authority'. To be noted, sponsoring authority is the fourth respondent.

2. Mr.W.Camyles Gandhi, learned counsel on record for petitioner and Mr.E.Raj Thilak, learned State Additional Public Prosecutor for all respondents are before us.

3. Mr.W.Camyles Gandhi, learned counsel on record for HCP petitioner in his campaign against the impugned preventive detention order drew our attention to paragraph 5 of the grounds of impugned preventive detention order and the same reads as follows:

'5. I am aware that now Vallarasu has been lodged at Central Prison, Coimbatore as a remand prisoner in Tiruppur City, Tiruppur North Police Station Crime No.21/2023 case and his remand period has been extended in this case till 17.03.2023. I am aware that Vallarasu has not moved any bail petition in this case till the date. However, it is "real possibility" that Vallarasu coming out on bail if he moved bail petition before the concerned court in future. In spite of, it is came to know through the statement of the Inspector of Police, that the



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family members of the accused Vallarasu are being taken to seek appropriate court to release him on bail. However it is "real possibility" of coming out on bail by filing bail petition in the concerned court.'

4. Adverting to the aforementioned paragraph 5 of the grounds of impugned preventive detention order, learned counsel submitted that there is no statement from any relative of the detenu and there is no special report from the sponsoring authority. To be noted, mother of the detenu is the HCP petitioner before us. In this view of the matter, learned counsel submitted that subjective satisfaction arrived at by detaining authority qua imminent possibility of detenu being enlarged on bail is impaired as it is not supported by any material. In other words, subjective satisfaction is in the abstract and therefore it is impaired is learned counsel's say.

5. In response to this argument, learned Prosecutor submitted that the sponsoring authority has intimated the detaining authority that family members of the detenu are taking steps to take him out on bail.



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6. We carefully considered the submissions made on both sides and we find that if we were to consider the submission of learned Prosecutor there should atleast be a special report from the sponsoring authority, however, even if there was a special report from the sponsoring authority, absent statement from the relative of the detenu, it may get branded as a self-serving document but we are not going into that question in this case and we are leaving this question open as there is no special report from the sponsoring authority.

7. The aforementioned discussion leads us to the conclusion that the impugned preventive detention order requires interference owing to subjective satisfaction qua imminent possibility of detenu being enlarged on bail being impaired. As the impugned preventive detention order is vitiated, the same requires to be dislodged in this habeas legal drill.

8. Ergo, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 16.03.2023 bearing reference C.No.13/G/IS/Tiruppur City/2023 made by the second respondent is set aside and the detenu Thiru.Vallarasu, aged 22 years, Son of Thiru.Manikandan, is directed to be set at liberty forthwith, if not

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

(M.S.,J.) (R.S.V.,J.)
01.09.2023

Index : Yes
Neutral Citation : Yes
mmi

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

To

1. The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Fort St. George, Chennai -9.
2. The Commissioner of Police/Detaining Authority,
Tiruppur City, Tiruppur District.
3. The Superintendent of Prison,
Central Prison, Coimbatore,
Coimbatore District.
4. The Inspector of Police,
Tiruppur North Police Station,
Tiruppur District.
5. The Public Prosecutor,
High Court, Madras.



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

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