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H.C.P.No.787 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.07.2023

Coram

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

H.C.P.No.787 of 2023

Shanthi

.. Petitioner

VS

1.The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Fort St.George, Chennai – 600 009.

2.The Commissioner,
Greater Chennai, Vepery,
Chennai.

3.The Superintendent of Police,
Central Prison, Puzhal, Chennai.

4.The Inspector of Police,
J1 Saidapet Police Station,
Chennai.

.. Respondents

Petition filed under Article 226 of the Constitution of India
praying for issuance of a writ of habeas corpus to produce the body
of the petitioner's son namely Gokul, aged about 22 years, who is
detained in Central Prison, Puzhal, Chennai before this Court and
set him at liberty forthwith by calling for the records pursuant to



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the detention order in proceedings in Memo No.395/BCDFGISSSV/2022 dated 31.10.2022 on the file of the 2nd respondent herein and quash the same.

For Petitioner : Mr.B.Gopalakrishnan
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 31.10.2022 bearing reference BCDFGISSSV No.395/2022' [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.

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-



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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 detenu is a 'Goonda' within the meaning of Section 2(f) of Act 14 of 1982.

3. There are four adverse cases. The ground case which constitutes substantial part of substratum of the impugned detention order is Crime No.331 of 2022 on the file of J-1 Saidapet Police Station for alleged offences under Sections 341, 294(b), 324, 397, 427, 336 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.

4. Mr.B.Gopalakrishnan, learned counsel on record for petitioner and Mr.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/grounds have been raised/urged but in the final hearing today, learned counsel for petitioner projected his argument on the



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point that subjective satisfaction arrived at by the detaining authority as regards imminent possibility of detenu being enlarged on bail is impaired. 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.....Further, in a similar case, registered at G-3 Kilpauk P.S. Cr.No.275/2019 u/s.341, 294(b), 323, 336, 397, 427 & 506(ii) of IPC, the bail was granted to the accused Thiru.Arun @ Arunkumar by the Court of learned Principal Sessions, Chennai in Crl.M.P.No.21605/2019. Hence I infer that there is a real possibility of his coming out on bail in J-1 Saidapet Police Station Crime No.330/2022 by filing bail application and another bail application for J-1 Saidapet Police Station Crime No.331/2022 before the appropriate court, since, in similarly placed cases, bail was granted by the courts after a lapse of time.....'

6. We had the benefit of perusing the aforementioned bail order [we shall refer to the same as 'Arun's case' as Arun @ Arunkumar is the petitioner therein]. In paragraph 2 of Arun's case bail order, it is stated as follows:

'...The petitioner has no bad antecedents....'

7. Adverting to the aforementioned portion of Arun's case



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bail order, learned counsel for petitioner submits that even according to the impugned preventive detention order, there are as many as four adverse cases in the case on hand and therefore, the comparison is bad. We have no hesitation in accepting this submission of learned counsel for petitioner that subjective satisfaction arrived at by the detaining authority is impaired as comparison should be qua determinants/parameters for grant of bail too. The sequitur is, impugned preventive detention order deserves to be dislodged.

8. Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 31.10.2022 bearing reference BCDFGISSSV No.395/2022 made by the second respondent is set aside and the detenu Thiru.Gokul, aged 22 years, son of Thiru.Sankar, 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.)
04.07.2023

Index : Yes/No
Neutral Citation : Yes/No
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P.S: Registry to forthwith communicate this order to Jail authorities in Central Prison, Puzhal, Chennai - 66.



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To

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and
R.SAKTHIVEL , J.,**

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