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H.C.P.No.1183 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.02.2023

Coram

The Hon'ble Mr. Justice **M.SUNDAR**
and
The Hon'ble Mr. Justice **M.NIRMAL KUMAR**

H.C.P.No.1183 of 2022

Lydia Rayan @ Renuka Devi
W/o.Mahesh Rayan

... Petitioner/ Detenue

-VS-

1. The State of Tamil Nadu
Rep. by the Secretary to the Government
Prohibition & Excise Department
Fort St. George, Secretariat
Chennai – 600 009
2. The Commissioner of Police
Tambaram Commissionerate
Tambaram
3. The Inspector of Police
EDF/Forgery Investigation Wing
Central Crime Branch
Chennai



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4. The Superintendent of Police
Special Prison for Women
Puzhal
Chennai - 600 066

... Respondents

Habeas Corpus Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus calling for the records in Detention Order in Memo No.91/BCDFGISSSV/2022 dated 23.06.2022 on the file of the 2nd respondent herein and set aside the same and direct the Respondents herein to produce the petitioner Lydia Rayan @ Renuka Devi, wife of Mahesh Rayan before this Court and set her at liberty.

For Petitioner	..	Mr.C.K.M.Appaji
For Respondents	..	Mr.R.Muniyapparaj 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 in this Court on 20.06.2022 assailing a detention order dated 23.05.2022 bearing reference No.91/BCDFGISSSV/2022 made by the second respondent. This detention order shall hereinafter be referred to as 'impugned detention order' and the second respondent shall hereinafter be referred to as 'Detaining Authority'.



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2. In and by the impugned detention order, the Detaining Authority has clamped preventive detention qua the detenue (to be noted, detenue herself is the petitioner before us) on the premise that detenue is a 'GOONDA' within the meaning of 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, Slum-Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982)' [hereinafter 'Act 14 of 1982' for the sake of convenience and clarity].

3. There are two adverse cases and one ground case. Considering the facts and circumstances of the matter and the grounds on which the impugned detention order is being assailed before us, it will suffice to refer to the ground case. The ground case is Crime No.119 of 2022 on the file of E9, Thalambur PS (CCB Tambaram Police Commissionerate) for alleged offences qua Sections 409, 420, 465, 467, 471 & 120(B) of 'Indian Penal Code, 1860 (Act 45 of 1860)' ['IPC' for brevity]. The petitioner/detenue was arrested, remanded on 27.04.2022 and she remains incarcerated since then.

4. Mr.C.K.M.Appaji, learned counsel for petitioner and Mr.R.Muniyapparaj, learned State Additional Public Prosecutor for all the respondents are before us.



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5. To be noted, the third respondent is the Sponsoring Authority.

6. Notwithstanding very many averments in the affidavit filed in support of HCP, learned counsel posited his arguments on two points, both points find favour with us and therefore, we shall set out the two points, our discussion and dispositive reasoning on the same infra. Before we do that we remind ourselves of the time honoured principle that preventive detention is not a punishment and habeas corpus is a high prerogative writ.

7. The first point urged by learned counsel for petitioner is pertains to similar case which has been relied on by the Detaining Authority in the impugned detention order to arrive at subjective satisfaction that there is imminent possibility of the detenue being enlarged on bail. This similar case details has been set out in paragraph 4 of the detention order and relevant portion thereat reads as follows:

'4.....In a similar case registered in Central Crime Branch -I , Cr.No.139 of 2020 u/s.120(B), 420, 465, 467, 468, 471 IPC, the bail was granted by the Hon'ble High Court, Madras in Crl.O.P.No.2341/2021. Hence, I infer that there is real possibility of her coming out on bail in Thalambur PS (CCB/Tambaram) Cr.No.119/2022 by filing another bail application before the appropriate court, since in similar case bail is granted by the courts after a lapse of time. '



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8. Learned counsel submits that the aforementioned is not a similar case. There are two reasons. One reason is, there is no Section 409 IPC offence in the case relied upon and the second point is, it is a High Court order. Learned counsel also submits that this has been raised by the petitioner as ground (n), which reads as follows:

'n) The similar case in Crime No.139 of 2020 was registered under Section 120(b), 420, 465, 467, 468 and 471 of IPC. Whereas the ground case in Crime No.119 of 2020 was registered under Section 120(b), 409, 420, 465, 467, and 471 of IPC. Thus, both cases not similar each other.'

9. This ground (n) has been met by the State in Counter Affidavit in sub-paragraph (n) of Paragraph 3, which reads as follows:

'I respectfully submit that the averments made in Paragraph (o) of the grounds are denied as false and incorrect. In the similar case, bail is granted to the accused considering the several circumstances, but not based on a sole reason as stated by the petitioner.'

10. A careful perusal of the stated positions of both sides leaves us with the conclusion that a dissimilar case has admittedly been relied upon to arrive at subjective satisfaction that there is imminent possibility of the detainee being enlarged on bail. The stated positions of the parties which



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have been extracted and set out supra speaks for themselves.

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11. The next point urged pertains to grant of bail. The point is, while bail petition of the detenue was pending before the Sessions Court (after the detenue unsuccessfully moved the jurisdictional Magistrate), the impugned detention order proceeds on the basis that relatives of the detenue are taking steps to move a bail application in the appropriate Court. Relevant portion in this regard in the impugned detention order is also contained in Paragraph 4 and that portion of paragraph which is pertinent to this point reads as follows:

'4. I am aware that Tmt.Lydia Rayan @ Renuka Devi is in remand in Thalambur PS (CCB/Tambaram) Cr.No.119/2022 and lodged at Special Prison for Women, Puzhal as remand prisoner. She has moved a bail application Thalambur PS (CCB/Tambaram) Cr.No.119 / 2022 before the Judicial Magistrate-II Court, Chengalpattu in Crl.M.P.No.3592 of 2022 and the same was dismissed on 10.05.2022. And another bail petition filed before the District Session Court at Chegelpet in Crl.M.P.No.1927/2022 is pending. The sponsoring authority has stated that it is learnt that the relatives of Tmt.Lydia Rayan @ Renuka Devi are taking action to take her on bail in Thalambur PS (CCB/Tambaram) Cr.No.119/2022 by filing another bail application before the appropriate court.....'



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12. The aforementioned extract speaks for itself. The reason is, when a bail application is pending in the Sessions Court, another application can obviously not be moved in the appropriate Court. If the Detaining Authority had proceeded on the basis that the pending bail application is likely to end in favour of the detenu, that is a different matter altogether but that is not the position in the case on hand. As regards this second point, the same has been articulated by the petitioner in sub-paragraph (m) of Paragraph (3) of the affidavit, which reads as follows:

'm) When the bail petition in Crl.M.P.No.1927 of 2022 is pending before the Session Court Chengalpattu, the detaining authority ought not to have treated the bail granted by the Hon'ble High Court in Crl.O.P.No.2431 of 2021 as similar case and recorded the subjective satisfaction.'

13. The above point has been met by State in the counter affidavit in sub-paragraph (m) of Paragraph 3, which reads as follows:

'm. I respectfully submit that the averments made in Paragraph (m) of grounds are denied as false and incorrect. As stated earlier, it is true that the bail petition filed by the detenu is pending before the Court. For that reason only, the detaining authority had stated that eventhough the bail petition is pending at the time of detention, there is imminent possibility of her enlarging on bail after a lapse of time and in support of this, similar case details where an accused was



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enlarged on bail were supplied to the detenu.'

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14. A careful perusal of the rival stated positions brings to light that the subjective satisfaction of the Detaining Authority regarding detenue being enlarged on bail and more particularly, imminent possibility of detenue being enlarged on bail is based on an erroneous premise. Therefore, the second point also enures to the benefit of the petitioner.

15. As both the points urged by the petitioner enure to the benefit of the petitioner, the impugned detention order dated 23.05.2022 bearing reference No.91/BCDFGISSSV/2022 made by the second respondent is set aside and the detenue Lydia Rayan @ Renuka Devi, female, aged 52 years, wife of Mahesh Rayan is directed to be set at liberty forthwith unless required in connection with any other case/s.

(M.S,J.) (M.N.K.,J.)
01.02.2023

Index:Yes/No

Neutral Citation : Yes

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P.S: Registry to forthwith communicate this order to Jail authorities in Special Prison for Women, Puzhal, Chennai-66

To



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2. The Commissioner of Police
Tambaram Commissionerate
Tambaram
3. The Inspector of Police
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4. The Superintendent of Police
Special Prison for Women
Puzhal
Chennai - 600 066
5. The Public Prosecutor
Madras High Court



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and
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