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H.C.P.No.858 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.09.2023

CORAM

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

H.C.P.NO.858 OF 2023

D.Sasikala

.. Petitioner

VS

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

2.The Commissioner of Police
Office of the Commissioner of Police
Avadi.

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

4.The Inspector of Police
T-1, Ambattur Police Station,
Chennai.

.. Respondents

PRAAYER: Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Habeas Corpus to call for the records pertaining to the order of detention passed by the second respondent in



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his proceedings in No.98/ BCDFGISSSV/2023 dated 12.04.2023 and quash the same as illegal and produce the detenu, namely Dinesh S/o. Deenadayalan, aged 22 years as Goonda now he is confined in Central Prison, Puzhal-II, Chennai before this Court and set him at liberty.

For Petitioner : Mr.S.Lokesh

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 the detenu assailing a 'preventive detention order dated 12.04.2023 bearing reference Memo No.98/BCDFGISSSV/2023 [hereinafter 'impugned preventive 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 preventive detention order has been made by second respondent.

2.Impugned preventive detention order has been made under 'The Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Cyber law offenders, Drug-offenders, Forest-offenders, Goondas,



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

3. There are three adverse cases. The ground case which is constitutes substantial part of substratum of the impugned preventive detention order is Crime No.201 of 2023 on the file of T-1 Ambattur Police Station for alleged offences registered under Sections 341, 294(b), 336, 427, 392, 397 and 506(ii) of 'The Indian Penal Code, 1860 (Act 45 of 1860)' ['IPC' for brevity]. Owing to the nature of the challenge to the impugned preventive detention order, it is not necessary to delve into the factual matrix or be detained further by facts.

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



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5.Mr.S.Lokesh, learned counsel for petitioner in his campaign against the impugned preventive detention order drew our attention to a portion of paragraph 4 of the impugned preventive detention order which reads as follows:

'4...In a similar case registered at under section 294(b), 341, 323, 397, 336, 427 and 506(ii) IPC, in J-4 Kotturpuram Police Station Crime No.43/2018, the bail was granted by the Court of Principal Sessions Judge at Chennai in Crl.M.P.No.1759/2018. Hence, I infer that there is a real possibility of his coming out on bail in T-1 Ambattur Police Station Cr.Nos.194/2023 and 201/2023 by filing bail application before the appropriate court, since in similar case bail is granted by the court after a lapse of time...'

6.Adverting to the above, learned counsel submitted that the bail order relied on by the Detaining Authority for arriving at subjective satisfaction as regards imminent possibility of the detenu being enlarged on bail is **Aravind case** bail order (similar case) as Aravind is the petitioner therein. To be noted, this submission is made by learned counsel based on the Tamil translation of **Aravind case** bail order.



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7.Learned counsel advertg to the grounds booklet served on the detenu submits that first page of *Aravind case* bail order had not been furnished to the detenu.

8.We had the benefit of examining the grounds booklet served on the detenu and we find that the submission is correct.

9.In response to the aforementioned argument, learned Prosecutor submitted that it is an inadvertent secretarial / clerical error.

10.We carefully considered the rival submission made on both sides. We find that a similar case bail order is a very important document as that pertains to subjective satisfaction arrived at by the Detaining Authority qua imminent possibility of the detenu being enlarged on bail. Therefore, similar case bail order not furnished fully to the detenu impairs the right of the detenu to make an effective representation against the impugned preventive detention order.

11.We have repeatedly held that the right of the detenu to make an effective representation against the impugned preventive



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detention order is a constitutional right ingrained in Article 22 (5) of Constitution of India. Impairment of this right vitiates a preventive detention order leaving it liable for being dislodged in a Habeas legal drill. Following this principle, we have no hesitation in saying that the case on hand is one where the impugned preventive detention order deserves to be dislodged.

12.Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 12.04.2023 bearing reference Memo No.98/BCDFGISSSV/2023 made by the second respondent is set aside and the detenu Thiru. Dinesh, male, aged 22 years, Son of Thiru. Deenadayalan 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.)

08.09.2023

Index : Yes

Neutral Citation : Yes

Speaking order

TK

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



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To

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