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H.C.P.No.972 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.09.2023

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

H.C.P.No.972 of 2023

V.Manimegalai

.. Petitioner

Vs

1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai – 9.

2.The Commissioner of Police,
Greater Chennai,
Office of the Commissioner of Police (Goondas Section).

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

4.The Inspector of Police,
P6, Kodungaiyur Police Station,
Chennai – 118.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus to call for the entire records connected with the detention order of the 2nd respondent in No.71/BCDFGISSSV/2023 dated 23.03.2023 and quash the same and direct the respondents to produce the body and person of detenu namely Arun @ Arunkumar, S/o.Velavan, aged about 23 years,



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detained in Central Prison, Puzhal, Chennai, before this Court and set him at liberty forthwith.

For Petitioner : Mr.B.M.Santharam
For Respondents : Mr.E.Raj Thilak
Additional Public Prosecutor

ORDER

[Order of the Court was made by **R.SAKTHIVEL, J.,**]

Petitioner, who is the mother of the detenu, filed this 'Habeas Corpus Petition' (hereinafter 'HCP' for the sake of brevity, convenience and clarity) assailing the 'order dated 23.03.2023 passed by the second respondent vide No.71/BCDFGISSSV/2023' (hereinafter 'impugned preventive detention order' for the sake of brevity).

2. When the captioned HCP was listed for admission on 09.06.2023, the following order was made:

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**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 02.06.2023 inter alia assailing a detention order dated 23.03.2023 bearing reference



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71/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.B.M.Santharam, 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), 336, 397 and 506(ii) of 'Indian Penal Code, 1860 (Act 45 of 1860)' ['IPC' for brevity] in Crime No.97 of 2023 on the file of P-6 Kodungaiyur 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-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 representation dated 30.05.2023 has not been considered by the respondents.

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.'

3. Heard Mr.B.M.Santharam, learned counsel for petitioner and Mr.E.Raj Thilak, learned Additional Public Prosecutor for respondents.



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4. At the time of admission, learned counsel for the petitioner has projected his attack on the ground that the representation dated 30.05.2023 has not been considered by the respondents. Today, in the final hearing, learned counsel for petitioner has submitted that the detaining authority has not applied his mind before passing the impugned preventive detention order and in the similar case relied on by the detaining authority, bail was granted based on no serious objection on the side of the prosecution agency. Learned counsel drew our attention to a portion of paragraph 4 of the grounds of impugned preventive detention order which reads as follows:

'4....In a similar case registered u/s 341, 294(b), 397 and 506(ii) of IPC at P-3 Vyasarpadi Police Station in Crime No.383/2018, the bail was granted by the Court of learned Principal Sessions, Chennai in Crl.M.P.No.8231/2018. Hence, I infer that it is very likely of his coming out on bail in P-6 Kodungaiyur Police Station Crime No.37/2023, since in a similar case, the bail was granted by court after a lapse of time...'

5. Learned counsel for the petitioner drew our attention to the bail order dated 30.05.2018 passed by the XV Additional Sessions Judge, Chennai in Crl.M.P.No.8231 of 2018. We had the benefit of



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perusing the said bail order. In the bail order, prosecution agency has not raised any serious objection to allow the said bail petition. Hence the detaining authority has not applied his mind before passing the impugned preventive detention order.

6. Per contra, learned Additional Public Prosecutor has submitted that the detaining authority after considering all materials passed the impugned preventive detention order. Further, the offences in the similar case relied on by the detaining authority and the ground case are broadly comparable. Accordingly he prays to dismiss the captioned HCP.

7. We have considered the submissions of both sides and also perused the bail order relied on by the detaining authority. In the similar case bail order relied on by the detaining authority, bail was granted as the prosecution agency did not raise any serious objection to allow the petition. Therefore, comparing the ground case with the similar case is a flawed exercise and the impugned preventive detention order is liable to be set aside.

8. In the result, captioned HCP is allowed. Impugned preventive



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detention order dated 23.03.2023 bearing reference No.71/BCDFGISSSV/2023 made by the second respondent is set aside and the detenu Thiru.Arun @ Arunkumar, aged 23 years, Son of Thiru.Velavan, 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.)
12.09.2023

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.

To

- 1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai – 9.
- 2.The Commissioner of Police,
Greater Chennai,
Office of the Commissioner of Police (Goondas Section).
- 3.The Superintendent of Prison,
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- 5.The Public Prosecutor,
High Court, Madras.

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