



WEB COPY



H.C.P.No.1296 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.04.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

H.C.P.No.1296 of 2022

Priya

W/o.Sadham Hussain @ Santhosh

.. Petitioner

Vs.

1. The Additional Chief Secretary to Government
Home, Prohibition and Excise Department
Fort St.George
Chennai-600 009.
2. Commissioner of Police
Greater Chennai.
3. The Superintendent
Central Prison,
Puzhal, Chennai-66.
4. The Inspector of Police
Law and Order
R-6, Kumaran Nagar Police Station
Chennai.

.. Respondents



H.C.P.No.1296 of 2022

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 detention order passed by the second respondent pertaining to the order made in BCDFGISSSV No.160/2022 dated 17.06.2022 in detain the detenu under 2(f) of Tamil Nadu Act 14 of 1982, as a GOONDA and quash the same and direct the respondent to produce the detenu Sadham Hussain @ Santhosh, son of Chandrasekar aged about 22 years, who is detained at Central Prison, Puzhal before this Hon'ble Court and set him at liberty.

For Petitioner	:	Mr.A.Elumalai
For Respondents	:	Mr.R.Muniyapparaj Additional Public Prosecutor assisted by Mr.M.Sylvester John, Advocate

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 wife of the detenu assailing a 'preventive detention order dated 17.06.2022 bearing reference BCDFGISSSV No.160/2022' [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 the impugned detention order has been made by second respondent.

Page Nos.2/8



H.C.P.No.1296 of 2022

WEB COPY

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-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 and one ground case. The ground case which is the sole substratum of the impugned detention order is Crime No.170 of 2022 on the file of R-6, Kumaran Nagar Police Station for alleged offences under Sections 294(b), 323, 392, 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.



H.C.P.No.1296 of 2022

4. Mr.A.Elumalai, learned counsel on record for petitioner and Mr.R.Muniyapparaj, learned State Additional Public Prosecutor, assisted by Mr.M.Sylvester John, learned counsel for all respondents are before us.

5. In the support affidavit qua captioned HCP, several grounds have been raised but in the hearing today, Mr.A.Elumalai, learned counsel for petitioner predicated his campaign against the impugned detention order on one point and that one point turns on subjective satisfaction arrived at by the Detaining Authority qua imminent possibility of the detenu being enlarged on bail. Elaborating on this point, learned counsel drew our attention to the impugned detention order and submitted that the ground case in Crime No.170 of 2022 on the file of R-6 Kumaran Nagar Police Station for alleged offences under Sections 294(b), 323, 392, 397, 427, 336 and 506(ii) of IPC but the Detaining Authority has relied on a bail order dated 27.10.2021 in CrI.M.P.No.19198 of 2021 on the file of the Court of Sessions at Chennai in Crime No.527 of 2021 for alleged offences under Sections 341, 294(b), 336, 324, 392, 427, 397 and 506(ii) of IPC on the file of R-6 Kumaran Nagar Police Station. To be noted, in this 27.10.2021 bail order one Ashok is the



H.C.P.No.1296 of 2022

petitioner and therefore the same shall be referred to as Ashok's case.

Learned counsel submits that alleged offences in ground case do not include Sections 341 and 324 of IPC and therefore two cases are not comparable. In response to this submission, learned Prosecutor submits that the two cases are broadly comparable but we are of the view that it may not be necessary to embark upon the exercise of delving into these aspects of the matter as a perusal of bail order in Ashok's case brings to light that there was only one previous case and the injured was discharged from the hospital. It is clear from paragraph No.5 of Ashok's case bail order that this aspect of the matter weighed in the mind of the learned Sessions Judge in gravitating towards granting bail whereas in the case on hand even according to the impugned detention order, there are as many as four adverse cases. Therefore comparison of Ashok's case with the case on hand for arriving at subjective satisfaction that there is imminent possibility of the detenu being enlarged on bail, in our opinion, is clearly flawed. The sequitur is, the impugned detention order deserves to be dislodged.

6. Before concluding, we also remind ourselves that preventive detention is not a punishment and HCP is a high prerogative writ.

Page Nos.5/8



H.C.P.No.1296 of 2022

7. Apropos, the sequitur is, captioned HCP is allowed and further sequitur is impugned detention order dated 17.06.2022 bearing reference BCDFGISSSV No.160/2022 made by the second respondent is set aside and the detenu Thiru.Sadham Hussain @ Santhosh, aged 22 years, son of Thiru.Chandrasekar, 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.)

(M.N.K.,J.)

10.04.2023

Index : Yes

Speaking

Neutral Citation : Yes

mk

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



H.C.P.No.1296 of 2022

WEB COPY

To

1. The Additional Chief Secretary to Government
Home, Prohibition and Excise Department
Fort St.George
Chennai-600 009.
2. Commissioner of Police
Greater Chennai.
3. The Superintendent
Central Prison,
Puzhal, Chennai-66.
4. The Inspector of Police
Law and Order
R-6, Kumaran Nagar Police Station
Chennai.
5. The Public Prosecutor
High Court, Madras.



WEB COPY



H.C.P.No.1296 of 2022

M.SUNDAR, J.,
and
M.NIRMAL KUMAR, J.,

mk

H.C.P.No.1296 of 2022

10.04.2023

Page Nos.8/8