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H.C.P.No.1409 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.04.2023

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THE HONOURABLE MR.JUSTICE **M.SUNDAR**
and
THE HONOURABLE MR.JUSTICE **M.NIRMAL KUMAR**

H.C.P.No.1409 of 2022

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.. Petitioner

Vs

- 1.State of Tamil Nadu rep. By
The Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George, Chennai – 9.
- 2.The Commissioner of Police,
Avadi City.
- 3.The Superintendent of Prison,
Central Prison, Puzhal, Chennai.
- 4.The Inspector of Police,
Thirumullaivoyal Police Station,
Avadi Commissionerate Limits.

.. Respondents

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 order of detention passed by the second respondent in BCDFGISSSV No.59/2022 dated 17.06.2022 against the petitioner's son the detenu Vikki @ Vignesh, aged 25 years, son of Shankar, now

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confined in Central Prison, Puzhal, Chennai and set aside the same and direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner : Mr.T.Muruganantham
For Respondents : Mr.R.Muniyapparaj
Additional Public Prosecutor
assisted by Mr.M.Sylvester John

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 17.06.2022 bearing reference No.59/BCDFGISSSV/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



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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 is an adverse case. The ground case which is the sole substratum of the impugned detention order is Crime No.404 of 2022 on the file of T-10 Thirumullaivoyal Police Station for alleged offence under Section 302 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.T.Muruganantham, 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.



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5. In the support affidavit qua captioned HCP several grounds have been raised/urged but in the hearing only one point was placed before us for consideration. This one point turns on subjective satisfaction arrived at by the detaining authority with regard to imminent possibility of detenu being enlarged on bail. In this regard, we perused the impugned preventive detention order and more particularly, paragraph 4 thereat and the most relevant portion of paragraph 4 reads as follows:

'4. The sponsoring authority has stated that it is learnt that the relatives of Thiru.Vikki @ Vignesh are taking steps to take him on bail in T-10 Thirumullaivoyal Police Station Crime No.404/2022 case by filing bail application before the appropriate court. Hence I infer that there is a real possibility of his coming out on bail in T-10 Thirumullaivoyal Police Station Crime No.404/2022 case by filing bail application before the appropriate court.'

6. This Bench had the benefit of perusing the grounds booklet also. In the grounds booklet, there is a Section 161(3) Cr.P.C. statement from one Tmt.Vellayammal (grandmother of detenu) and a special report from the sponsoring authority (fourth respondent) saying detenu's grandmother Vellayammal is taking steps to move a bail application. A careful perusal of the statement of detenu's



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grandmother and the special report brings to light that both do not bear a date. Therefore, both these documents do not cut ice qua subjective satisfaction arrived at by the detaining authority regarding imminent possibility of detenu being enlarged on bail.

7. Learned State Additional Public Prosecutor really does not have much of a say as the entire point turns on records before us.

8. The narrative thus far leaves this Bench with the considered view that the subjective satisfaction arrived at by the detaining authority with regard to imminent possibility of detenu being enlarged on bail is clearly impaired and the impugned detention order deserves to be dislodged.

9. Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 17.06.2022 bearing reference No.59/BCDFGISSSV/2022 made by the second respondent is set aside and the detenu Thiru.Vikki @ Vignesh, son of Thiru.Shankar, aged 25 years 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.

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(M.S.,J.) (M.N.K.,J.)
11.04.2023

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.

To

- 1.The Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George, Chennai – 9.
- 2.The Commissioner of Police,
Avadi City.
- 3.The Superintendent of Prison,
Central Prison, Puzhal, Chennai.
- 4.The Inspector of Police,
Thirumullaivoyal Police Station,
Avadi Commissionerate Limits.
- 5.The Public Prosecutor
High Court, Madras.

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and
M.NIRMAL KUMAR , J.,**

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