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H.C.P.No.1435 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.03.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

H.C.P.No.1435 of 2022

Sulaika

W/o.I.Basheer @ Thakkali Basheer

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Petitioner

Vs.

1. The Secretary to Government
Home, Prohibition and Excise Department
Secretariat,
Fort St.George
Chennai-600 009.
2. The Commissioner of Police / Detaining Authority
City Police Officer
Huzur Road, Coimbatore City
Coimbatore - 18.
3. The Superintendent of Police
Central Prison - Coimbatore
Coimbatore District.
4. State rep. by its
The Inspector of Police
B-1 Bazaar Police Station
Coimbatore District.

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Respondents

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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, relating to the petitioner's husband detention under Tamil Nadu Act 14 of 1982 vide detentio order, dated 19.07.2022 on the file of the second respondent herein made in proceedings Memo C.No.42/G/IS/2022, quash the same as illegal and consequently, direct the respondents herein to produce the petitioner's husband namely, I Basheer @ Thakkali Basheer, S/o.Ismail aged 39 years before this Hon'ble High Court and set the petitioner's husband at liberty from detention, now the petitioner's husband detained at Central Prison, Coimbatore.

For Petitioner : Mr.S.Senthilvel
representing Mr.W.Camyles Gandhi

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

ORDER

[Order of the Court was made by N.ANAND VENKATESH, J.,]

Captioned 'Habeas Corpus Petition' ['HCP' for the sake of brevity] has been filed by wife of detenu assailing a 'preventive detention order dated



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19.07.2022 bearing reference C.No.42/G/IS/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.

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 is one adverse case and one ground case. The ground case which is the sole substratum of the impugned detention order is Crime No.186 of 2022 on the file of B-1 Bazaar Police Station for the alleged offences under Sections 294(b), 341, 323 and 307 of 'The Indian Penal Code



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(45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] and subsequently, altered into Sections 294(b), 341, 323, 307 and 506(ii) of IPC.

4. Mr.S.Senthilvel, 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. The main ground which was urged by the learned counsel for the petitioner is that the Detaining Authority was aware of the fact that the bail petition filed by the detenu in CMP.No.3137 of 2022 was dismissed by an order dated 06.07.2022. That apart, the subsequent bail application filed by the detenu in CMP.No.3537 of 2022 was pending. However, the Detaining Authority came to the conclusion that there is likelihood of the detenu coming out on bail based on the order dated 06.07.2022 passed in CMP.No.3132 of 2022 by the learned Principle District and Sessions Judge, Coimbatore and the learned counsel for the petitioner submitted that the order under reference was disposed of along with the earlier bail petition filed by the detenu in CMP No.3137 of 2022 and this was not taken into



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consideration by the Detaining Authority and hence, the impugned detention order suffers from non-application of mind.

6. The detenu was arrested in the course of investigation in Crime No.186 of 2022. There are totally four accused persons in this case and the detenu was arrayed as A1. The detenu filed earlier bail petition in CMP.No.3137 of 2022 and simultaneously, A2 to A4 have also filed bail petition in CMP.No.3132 of 2022. Both the bail petitions were taken up together by learned Principal District and Sessions Judge, Coimbatore and by order dated 06.07.2022, bail petition filed by A2 to A4 in CMP.No.3132 of 2022 was allowed and bail was granted to them by imposing certain conditions. However, the bail application filed by the detenu in CMP.No.3137 of 2022 was rejected considering the bad antecedents of the detenu.

7. The Detaining Authority has stated in the impugned detention order that the co-accused were granted bail in CMP.No.3132 of 2022 and therefore, there is imminent possibility of the detenu being enlarged on bail



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in the pending bail application in CMP.No.3537 of 2022. This reasoning given by the Detaining Authority, suffers from non-application of mind. The bail order that was granted in favour of the co-accused in CMP.No.3132 of 2022 was considered along with bail petition that was filed by the detenu in CMP.No.3137 of 2022 and bail petition filed by the detenu was dismissed considering his bad antecedents. Therefore, the grant of bail to the co-accused in CMP.No.3132 of 2022 can never be taken into account to come to the conclusion that there is imminent possibility of the detenu being granted bail in the subsequent bail application. On this ground, the impugned detention order is liable to be interfered by this Court.

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

9. Apropos, the sequitur is, captioned HCP is allowed. Impugned detention order dated 19.07.2022 bearing reference C.No.42/G/IS/2022 made by the second respondent is set aside and the detenu Mr.I.Basheer @ Thakkali Basheer, aged 39 years, son of Mr.Ismail, is directed to be set at



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liberty forthwith, if not required in connection with any other case / cases.

There shall be no order as to costs.

(M.S.,J.)

(N.A.V.,J.)

21.03.2023

Index : Yes / No

Speaking / Non-speaking

Neutral Citation : Yes / No

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

To

1. The State represented by its
The Additional Chief Secretary to Government (Home)
Prohibition and Excise Department
Government of Tamilnadu
Fort St.George, Chennai-600 009.
2. The District Magistrate and
The District Collector
Namakkal District.
3. The Superintendent of Police
Namakkal District
Namakkal.
4. The Superintendent of Police
Central Prison, Salem.
5. The Inspector of Police
Namakkal Police Station
Namakkal, Namakkal Taluk & District.
6. The Public Prosecutor
High Court, Madras.

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and
N.ANAND VENKATESH, J.,

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