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H.C.P.No.1472 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.02.2023

CORAM :

THE HONOURABLE MR.JUSTICE M.SUNDAR

AND

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

H.C.P.No.1472 of 2022

Kannamal
W/o.Perumal

...Petitioner
Mother of the detenu

Vs.

The State represented by its

- 1.The Secretary to Government (Home),
Prohibition and Excise Department,
Government of Tamil Nadu,
Fort St.George,
Chennai – 600 009.
- 2.The Commissioner of Police,
Salem City,
Salem.
- 3.The Superintendent of Prison,
Central Prison,
Salem.

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4.The Inspector of Police,
Annadanapatty Police Station,
Salem District.

...Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus calling for the records relating to the detention order in C.M.P.No.55/Goonda/Salem City/2022, dated 08.06.2022 passed by the second respondent under the Tamil Nadu Act 14 of 1982 and set aside the same and direct the respondents to produce Manikandan S/o. Perumal, aged about 25 years, the detenu, now confined in Central Prison at Salem before this Court and set him at liberty.

For Petitioner : Mr.D.Mario Johnson
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' [hereinafter 'HCP' for the sake of brevity] has been filed by mother of the detenu assailing a 'detention order

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dated 08.06.2022 bearing reference C.M.P.No.55/Goonda/Salem City/2022'

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[hereinafter 'impugned detention order' for the sake of brevity and convenience] made by the 'second respondent i.e., jurisdictional Commissioner of Police' [hereinafter 'Detaining Authority' for the sake of brevity and convenience]. To be noted, fourth respondent who is the jurisdictional Inspector of Police is the Sponsoring Authority.

2.Mr.D.Mario Johnson, learned counsel for petitioner and Mr.R.Muniyapparaj, learned State Additional Public Prosecutor assisted by Mr.M.Sylvester John, for all the four respondents are before us.

3.Notwithstanding very many averments in the support affidavit qua captioned HCP, learned counsel for petitioner predicated his campaign against the impugned detention order on two grounds and they are as follows:

- i. Detaining Authority has arrived at subjective satisfaction pertaining to imminent possibility of the detenu being enlarged on bail, when no bail



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application has been filed by the detenu, by merely saying that relatives of the detenu are taking efforts to move bail application but it is not supported by any material.

- ii. The subjective satisfaction pertaining to imminent possibility of the detenu being enlarged on bail has been arrived at by relying on what according to the Detaining Authority is a similar case, i.e., Crime No.693 of 2018 on the file of Kannakuruchi Police Station for alleged offences under Sections 392, 397 and 506(ii) of 'Indian Penal Code, 1860 (Central Act 45 of 1860)' ['IPC' for brevity] whereas the ground case is Crime No.214 of 2022 on the file of 4th respondent pertains to an alleged offence under Section 341 of IPC also and Section 341 of IPC pertains to punishment for wrongful restraint and therefore the two cases are dissimilar.



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4. In response to the aforementioned submission, the learned State Additional Public Prosecutor made submissions, a summation of which is as follows:

- i. As regards the efforts made by the relatives of the detenu to move a bail application, the Detaining Authority had credible inputs.
- ii. As regards similar case and ground case, other offences (other than Section 341 of IPC) are largely and broadly similar.

5. We have carefully considered the stated positions of the parties. Before we deal with the two points in the sequence in which they were canvassed before us, we deem it appropriate to mention that we have noticed that both points turn on subjective satisfaction of the Detaining Authority in saying that there is imminent possibility of the detenu being enlarged on bail.



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6.As regards the first point, a mere submission that the Detaining Authority had credible input before him that relatives of the detenu are taking efforts to move the bail application is neither convincing nor helpful to the respondents in defending the impugned detention order. Preventive detention is not a punishment and habeas corpus is a high prerogative writ. Therefore, it is necessary that the efforts said to have been taken by the relatives qua making a bail application has to be supported by statements under Sections 161 or 167 of 'The Code of Criminal Procedure, 1973' ['Cr.P.C.' for brevity]. To be noted, this facet of the matter has to be tested on a case to case basis and in the facts and circumstances of the case on hand, wherein the impugned detention order has been made branding the detenu as 'Goonda' within the meaning of Section 2(f) of '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] does not pass muster. Therefore the first point enures to the benefit of the petitioner.



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7.As regards the second point, though the other alleged offences, namely Section 392 read with Sections 397 and 506(ii) of IPC are similar as between the ground case and what according to the Detaining Authority is a similar case, Section 341 of IPC which deals with the punishment of wrongful restraint is critical and therefore we have no difficulty in saying that the comparison is clearly akin to comparing Apples and Oranges or to put it differently, comparing Chalk and Cheese. In this view of the matter, the argument of learned counsel for petitioner finds favour with us on both points, and the submission of the Prosecutor in our opinion, is not good enough to neutralise the argument of learned counsel for the petitioner.

8.In the light of the discussion and dispositive reasoning supra, we have no hesitation in saying that the impugned detention order deserves to be interfered with.

9.Ergo, the sequitur is, the captioned HCP is allowed and the impugned detention order dated 08.06.2022 bearing reference

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C.M.P.No.55/Goonda/Salem City/2022 made by the second respondent is set aside and detenu Mr.Manikandan, male, aged about 25 years, S/o. Mr.Perumal, now detained in Central Prison, Salem is directed to be set at liberty forthwith unless required in connection with any other case/s.

(M.S., J.) (M.N.K., J.)
27.02.2023

Index : Yes / No
Internet : Yes / No
Neutral Citation : Yes / No
cda

P.S: Registry to forthwith communicate this order to jail authorities in Central Prison, Salem



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To

- 1.The Secretary to Government (Home),
Prohibition and Excise Department,
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- 2.The Commissioner of Police,
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Salem.
- 3.The Superintendent of Prison,
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Annadanapatty Police Station,
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- 5.The Public Prosecutor,
High Court, Madras.



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

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