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H.C.P.Nos.1464 and 1465 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.02.2023

Coram

The Hon'ble Mr. Justice **M.SUNDAR**
and
The Hon'ble Mr. Justice **M.NIRMAL KUMAR**

H.C.P.Nos.1464 and 1465 of 2022

Karbagavalli
W/o.Pandiyarajan

... Petitioner in H.C.P.No.1464/2022
/ wife of the detenu

Shanthi
W/o.Gobinath

... Petitioner in H.C.P.No.1465/2022
/ mother of the detenu

-VS-

1.The Additional Chief Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise Department,
Fort St. George,
Chennai – 600 009.

2.The Commissioner of Police/Detaining Authority,
Office of the Commissioner of Police,
Tiruppur City.



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3. The Superintendent of Prison,
Coimbatore Central Prison,
Coimbatore.

4. The Inspector of Police,
North Police Station,
Tiruppur City, Tiruppur.

... Respondents in both HCPs

Prayer in 1464 of 2022: Habeas Corpus Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus calling for the entire records, connected with the detention order of the respondent No.2 in C.No.54/G/IS/Tiruppur City/2022 dated 11.07.2022 and quash the same and direct the respondents to produce the body or person of the detenu by name Pandiyarajan @ Pandi, son of Govindaraj, aged 25 years, now detained as “GOONDA” at Coimbatore Central Prison before this Hon'ble Court and set him at liberty forthwith.

Prayer in 1465 of 2022: Habeas Corpus Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus calling for the entire records, connected with the detention order of the respondent No.2 in C.No.55/G/IS/Tiruppur City/2022 dated 11.07.2022 and quash the same and direct the respondents to produce the body or person of the detenu by name Sakthi Sanmugam, son of Gobinath, aged 19 years, now detained as “GOONDA” at Coimbatore Central Prison before this Hon'ble Court and set him at liberty forthwith.



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For Petitioner ..
(in both HCPs)

Mr.S.Mohammed Ansar

For Respondents ..
(in both HCPs)

Mr.R.Muniyapparaj
Additional Public Prosecutor
Assisted by
Mr.M.Sylvester John

COMMON ORDER

[Order of the Court was made by M.SUNDAR, J.]

This common order will now govern the captioned two 'Habeas Corpus Petitions' [hereinafter 'HCP' in singular and 'HCPs' in plural for the sake of convenience and clarity].

2. For the sake of convenience, 'H.C.P.No.1464 of 2022' shall be referred to as 'I HCP' and 'H.C.P.No.1465 of 2022' shall be referred to as 'II HCP'.

3. In 'I HCP', a detention order dated 11.07.2022 bearing reference C.No.54/G/IS/Tiruppur City/2022 has been assailed by wife of the detenu and in 'II HCP', a detention order dated 11.07.2022 bearing reference



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C.No.55/G/IS/Tiruppur City/2022 has been assailed by mother of the detenu. [These two impugned detention orders qua I HCP and II HCP shall hereinafter be referred as 'I impugned detention order' and 'II impugned detention order', respectively for the sake of convenience and clarity] {to be noted the two orders shall be collectively referred to as 'impugned detention orders' for the sake of convenience}.

4. Mr.S.Mohammed Ansar, learned counsel for petitioner and Mr.R.Muniyapparaj, learned Additional Public Prosecutor assisted by Mr.M.Sylvester John for respondents in both captioned HCPs are before us.

5. Notwithstanding very many averments in the support affidavit, learned counsel for petitioner drew our attention to Paragraph 5 in I impugned detention order, which reads as follows:

'(5) I am aware that now Pandiyarajan alias Pandi has been remanded to judicial custody at Tiruppur District Prison, in Tiruppur City, North Police Station Crime No.556/2022 case and in above case his remand period has been extended till 12.07.2022. I am



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aware that Pandiyarajan alias Pandi has not moved any bail petition in this case till the date. However it is “real possibility” that Pandiyarajan alias Pandi coming out on bail if he moved bail petition before the concerned court in future.'

Likewise Paragraph 5 in II impugned detention order, reads as follows:

'(5) I am aware that now Sakthi Sanmugam has been remanded to judicial custody at Tiruppur District Prison, in Tiruppur City, North Police Station Crime No.556/2022 case and in above case his remand period has been extended till 12.07.2022. I am aware that Further, Sakthi Shanmugam has filed bail petition in the above said case before the Principal Sessions Judge, Tiruppur and the same was dismissed in Criminal Miscellaneous Petition No.1297/2022 dated 05.07.2022. However it is “real possibility” that Sakthi Sanmugam coming out on bail if he moved bail petition before the concerned court in future.'

6. Learned counsel for petitioner submits that no bail application has been moved by the detenus in the ground case until today and therefore impugned detention orders proceeding on the premise that there is an imminent possibility of the detenus being enlarged on bail is clearly



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misplaced.

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7. Learned Additional Public Prosecutor submitted that in cases pertaining to Section 302 of 'Indian Penal Code, 1860 (Act 45 of 1860)' ['IPC' for brevity] there is every possibility of bail being granted.

8. Impugned detention orders have to be tested as on date on which they are made and in the cases on hand they have to be tested as of 11.07.2022. In any event in I HCP we are informed (without any dispute or contestation) by the learned counsel for petitioner that detenu has not moved any bail application until this day.

9. In II HCP, bail application in CMP No.1297 of 2022 was filed in the trial Court and the same was dismissed on 05.07.2022. Thereafter no bail application has been moved until today is learned petitioner counsel's say and this also is not subjected to any dispute or contestation.



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10. We have carefully considered the rival positions of the parties in the cases on hand. We find that there is no material or in other words to put it differently, there was no material before the detaining authority, i.e., no credible statement under Section 161 of Cr.P.C. from friends and relatives of the detenus. Therefore, the subjective satisfaction arrived at by the detaining authority that there is imminent possibility of the detenus being enlarged on bail, is not supported by adequate material. This vitiates and infarcts the impugned detention orders. We are of the view the impugned detention orders have to perish on this ground.

11. Ergo, the sequitur is,

(i) H.C.P. No.1464 of 2022 is allowed, impugned detention order dated 11.07.2022 bearing reference C.No.54/G/IS/Tiruppur City/2022 made by the second respondent is set aside and detenu Mr.Pandiyarajan @ Pandi, male, aged 25 years, son of Mr.Govindaraj, now detained in Coimbatore Central Prison, Coimbatore is directed to be set at liberty forthwith unless required



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in connection with any other case/s.

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(ii) H.C.P. No.1465 of 2022 is allowed and impugned detention order dated 11.07.2022 bearing reference C.No.55/G/IS/Tiruppur City/2022 made by the second respondent is set aside and detenu Mr.Sakthi Sanmugam, male, aged 19 years, son of Mr.Gobinath, now detained in Coimbatore Central Prison, Coimbatore 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
Speaking / Non-speaking
Neutral Citation : Yes / No
rsi

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

To

1.The Additional Chief Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise Department,
Fort St. George,



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Chennai – 600 009.

- 2.The Commissioner of Police/Detaining Authority,
Office of the Commissioner of Police,
Tiruppur City.
- 3.The Superintendent of Prison,
Coimbatore Central Prison,
Coimbatore.
- 4.The Inspector of Police,
North Police Station,
Tiruppur City, Tiruppur.
- 5.The Public Prosecutor,
High Court, Madras.



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

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