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HCP.No.1478 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.02.2023

Coram

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

H.C.P.No.1478 of 2022

Bakyalakshmi
W/o.Balaji

.. Petitioner

Vs.

1.The Secretary to Government,
Home, Prohibition and Excise Department ,
Secretariat,
Chennai - 600 009.

2.District Collector and District Magistrate
of Kancheepuram,
Tiruvallur, Tiruvallur District.

3.The Superintendent of Police,
Tiruvallur, Tiruvallur District.

4.The Superintendent,
Central Prison,
Puzhal, Chennai.

5.State rep. by
The Inspector of Police,
Ponneri Police Station,
Tiruvallur District.

... 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 records in connection with the order of detention passed by the 2nd respondent dated 08.07.2022 in memo.BCDFGISSSV.No.36/2022 against the petitioner's husband Balaji, M/25 Years Son of Dhamotharan who is confined at Central Prison, Puzhal, Chennai and set aside the same and consequently direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner : Mr.A.Saranraj
For Respondents : Mr.R.Muniyapparaj
Additional Public Prosecutor

ORDER

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

This order will now dispose of the caption Habeas Corpus Petition [hereinafter 'HCP' for the sake of brevity and convenience].

2.Captioned HCP has been filed by the wife of detenu assailing a 'detention order' dated 08.07.2022 bearing reference B.C.D.F.G.I.S.S.S.V.No.36/2022 made by the 'second respondent' [hereinafter 'detaining authority' for the sake of convenience and clarity]. This detention order shall hereinafter be referred to as 'impugned detention order' for the sake of convenience and clarity. To be noted, second respondent is the jurisdictional District Collector and District Magistrate.



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3.Mr.A.Saranraj, learned counsel appearing for petitioner and Mr.R.Muniyapparaj, learned Additional Public Prosecutor appearing for respondents are before us.

4.In and by the impugned detention order, the detenu has been detained branding him as 'Goonda' within the meaning of Section 2(f) of 'The Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug-offenders, Forest-offenders, Goondas, Immoral Traffic Offenders Slum grabbers and Video Priates Act, 1982 (Tamil Nadu Act 14 of 1982)' [hereinafter 'Act 14 of 1982' for the sake of convenience].

5.It may not be necessary to advert to facts, much less delve or dilate on the same as the petitioner's campaign against the impugned detention order turns on a short point. That short point pertains to imminent possibility of detenu being enlarged on bail.

6.Learned counsel for petitioner submits that the alleged occurrence was on 08.05.2022 and the detenu was arrested on 09.05.2022. It is further



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submitted that no bail application has been moved until this day much less as on the date of impugned detention order.

7.Be that as it may, the only mention about bail application in the impugned detention order is paragraph 8 and the same reads as follows:

'8) The accused Balaji has not filed any bail application in the Ground case in Ponneri Police Station Cr.No.126/2022 u/s.147, 148, 294(b), 324, 307, 302 IPC before this Court.'

8.A careful perusal of the above leaves us with the considered view that the impugned detention order is vitiated by the vice of non-application of mind. The reason is, while the detaining authority has mentioned that the detenu has not filed any bail application, there is no sequitur to the same. If not a sequitur, atleast the contra possibility should have been set out. In the case on hand, neither have been done. There is not even a mention in the impugned detention order that there is a possibility of bail application being moved or much less bail being granted. Therefore, though the detaining authority had referred to bail application not being filed has not said anything about the possibility of bail being granted much less about



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imminent possibility of detenu being enlarged on bail. This is in our considered opinion is non-application of mind.

9.The sequitur of the narrative, discussion and dispositive reasoning thus far is that the impugned detention order deserves to be interfered with.

10.Apropos, the sequitur is, captioned HCP is allowed and the detention order dated 08.07.2022 bearing reference B.C.D.F.G.I.S.S.V.No.36/2022 made by the second respondent is set aside and the detenu Thiru.Balaji, aged 25 years, son of Thiru.Dhamotharan is directed to be set at liberty forthwith unless required in connection with any other case. There shall be no order as to costs.

(M.S,J.) (M.N.K.,J.)
28.02.2023

Index:Yes/No

Neutral Citation : Yes/No

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Note: Registry to forthwith communicate this order to Jail authorities in Central Prison, Puzhal, Chennai



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Tiruvallur District.
- 6.The Public Prosecutor,
High Court of Madras,
Chennai - 104.



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

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