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H.C.P.No.1499 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.03.2023

Coram

THE HON'BLE MR. JUSTICE **M.SUNDAR**
and
THE HON'BLE MR. JUSTICE **M.NIRMAL KUMAR**

H.C.P.No.1499 of 2022

Mrs.Ezhilarasi
W/o.Murugan

... Petitioner/mother of the detenu

-Vs-

- 1.The Secretary to Government,
Home, Prohibition and Excise (XVI) Department,
Fort St. George, Secretariat, Chennai – 600 009.
- 2.The Commissioner of Police,
Office of the Commissioner of Police,
Tambaram City.
- 3.The Superintendent of Prison,
Central Prison, Puzhal – II,
Chennai District-600 066.
- 4.The Inspector of Police,
Maraimalai Nagar Police Station, Chennai.

... Respondents

Prayer: Habeas Corpus Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus calling for the records in Detention order in B.C.D.F.G.I.S.S.S.V.No.97/2022 dated 27.06.2022 on the file of the 2nd respondent and set aside the same and direct the respondents herein to produce the body of the petitioner's son detenu Jagadeesan @ Jagan, S/o.Murugan aged 22 years now confined in Central Prison at Puzhal-II before



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this Hon'ble Court and set him at liberty.

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For Petitioner : Mr.M.Mohamed Saifulla
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 detenu assailing a 'preventive detention order dated 27.06.2022 bearing reference BCDFGISSSV No.97/2022' (hereinafter 'impugned detention order' for the sake of convenience). To be noted, fourth respondent is the Sponsoring Authority.

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.



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3. There are four adverse cases and one ground case. The ground case which is the substratum of the impugned detention order is Crime No.268/2022 on the file of Maraimalai Nagar Police Station for alleged offences under Sections 341, 294(b), 386, 392, 307, 506(ii) of 'Indian Penal Code, 1860 (Act 45 of 1860)' ['IPC' for brevity]. 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.M.Mohamed Saifulla, learned counsel for petitioner and Mr.R.Muniyapparaj, learned State Additional Public Prosecutor assisted by Mr.M.Sylvester John for all four respondents are before us.

5. Mr.M.Mohamed Saifulla, learned counsel for petitioner notwithstanding very many averments/grounds in the support affidavit, advertent to paragraph 3 of the impugned detention order submits that subjective satisfaction of the detaining authority regarding imminent possibility of the detenu being enlarged on bail is not supported by adequate material.

6. Responding to the above arguments learned Additional Public Prosecutor drew our attention to a special report. We find that this special report is undated but it is at pages 407 & 409 of booklet/grounds of detention.



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7. A careful perusal of the same reveals that even according to the special report one Thiru.Chinnathambi @ Alattu is taking steps to move bail application. We are informed that this Thiru.Chinnathambi @ Alattu is a co-accused. Therefore, there is no difficulty in accepting the submission of learned counsel for the petitioner that subjective satisfaction is not based on any material much less tenable material. Therefore, we find no difficulty in persuading ourselves to say that the impugned detention order deserves to be set aside.

8. Ergo, the sequitur is, H.C.P. No.1499 of 2022 is allowed, impugned detention order dated 27.06.2022 bearing reference BCDFGISSSV No.97/2022 made by the second respondent is set aside and detenu Mr.Jagadeesan @ Jagan, male, aged 22 years, son of Mr.Murugan, now detained in Central Prison, Puzhal-II, Chennai is directed to be set at liberty forthwith unless required in connection with any other case/s.

(M.S.,J.) (M.N.K.,J.)
02.03.2023

Speaking / Non-speaking
Neutral Citation : Yes / No
kmi

P.S: Registry to forthwith communicate this order to Jail authorities in Central Prison-II, Puzhal, Chennai.



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To

- 1.The Secretary to Government,
Home, Prohibition and Excise (XVI) Department,
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- 2.The Commissioner of Police,
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Tambaram City.
- 3.The Superintendent of Prison,
Central Prison, Puzhal – II,
Chennai District-600 066.
- 4.The Inspector of Police,
Maraimalai Nagar Police Station,
Chennai.
5. The Public Prosecutor,
Madras High Court,
Chennai – 104.



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and
M.NIRMAL KUMAR, J.

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