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HCP No.1508 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.02.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

and

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

H.C.P.No.1508 of 2022

Mrs.Mehar Banu
W/o.Abdullah

.. Petitioner

Vs.

1. State of Tamil Nadu
Rep. by its Principal Secretary
Home, Prohibition and Excise Department
Secretariat
Chennai

2. The Commissioner of Police
Tiruppur City
Tiruppur

3. The Superintendent of Prison
Central Prison, Coimbatore

4. The Inspector of Police
Tiruppur North Police Station
Tiruppur

.. Respondents

Petition filed under Article 226 of the Constitution of India praying

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for issuance of a writ of habeas corpus to call for the records of the 2nd respondent herein in C.No.45/G/IS/Tiruppur City/2022 dated 15.06.2022, quash the same and direct the 2nd respondent herein to produce the body of the detenu Sheek Dhavood @ Shaik Dawood confined in Central Prison, Coimbatore and set him at liberty.

For Petitioner : Mr.I.Abdul Basith
along with Mr.K.Nizamuddin

For Respondents : Mr.R.Muniyapparaj
Additional Public Prosecutor

ORDER

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

Captioned 'Habeas Corpus Petition' ['HCP'] has been filed in this Court on 01.08.2022 assailing a 'detention order dated 15.06.2023 bearing reference C.No.45/G/IS/Tiruppur City/2022' [hereinafter 'impugned detention order' for the sake of convenience] made by the 'jurisdictional Commissioner of Police i.e., second respondent' ('Detaining Authority' for the sake of convenience and clarity).



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2. Suffice to say that the impugned detention order has been made on the premise that the detenu is a '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].

3. Mr.I.Abdul Basik along with Mr.K.Nizamuddin, learned counsel on record for petitioner (to be noted, HCP petitioner is the mother of the detenu) and Mr.R.Muniyapparaj, learned Additional Public Prosecutor for all the respondents are before us.

4. Notwithstanding very many averments in support affidavit, learned counsel focused his campaign against the impugned detention order on two points and both points find favour with us.

5. We now proceed to set out the points, discussion on the same and the dispositive reasoning infra.

6. The first point turns on subjective satisfaction of the 'Detaining Authority' qua imminent possibility of detenu being enlarged on bail.



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Adverting to paragraph 5.1 of the impugned detention order, learned counsel submits that the same refers to Crime No. 595 of 2017 on the file of 15, Velampalayam Police Station for alleged offences under Sections 294(b), 324 and 506 (ii) of 'Indian Penal Code, 1860 (Act 45 of 1860)' ['IPC' for brevity] and says that the same is a similar case. On the basis of bail granted by the High Court in this Crime No.595 of 2017, the Detaining Authority has arrived at the subjective satisfaction that there is imminent and real possibility of the detenu being enlarged on bail. Learned counsel submits that the copy of the bail order or any other particulars pertaining to this Crime No.595 of 2017 pertaining to Balaji @ Balakrishnan has not been furnished. In support of this contention, learned counsel placed before us grounds of detention which has been supplied to the detenu, who is incarcerated, in the form of a booklet which shall hereinafter be referred to as 'grounds booklet' for the sake of convenience and clarity.



7. In response to the above, learned Additional Public Prosecutor

drew our attention to Page No.137 of the grounds booklet and a scanned reproduction of the same is as follows:

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8. A careful perusal of the aforementioned page brings to light that above is the bail petition filed by the detenu in the ground case. To be noted, there is no other page in the grounds booklet to demonstrate that the similar case referred to in paragraph 5.1 of the impugned detention order has been annexed to the grounds booklet. Therefore, this point enures to the benefit of the HCP petitioner in her campaign against the impugned detention order.

9. There is no disputation or disagreement or contestation before us that the date of arrest of the detenu in the ground case is 22.05.2022. However, in sub-paragraph (iv) of paragraph 3 of the impugned detention order in English, it has been mentioned as 25.02.2022. Be that as it may, in the same impugned order in sub-paragraph (i) of Paragraph 3 of the impugned detention order, the date of arrest has been correctly mentioned as 22.05.2022. To be noted, in the Tamil translation of the impugned detention order, translation pertaining to sub-paragraph (iv) of Paragraph 3 mentions the date of arrest as 22.05.2022. Therefore, the impugned detention order is



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hit by the vice of non-application of mind besides translated copy not being provided.

10. Non-application of mind qua the an impugned detention order in preventive jurisprudence does not need elucidation. As regards translation, considering that the matter pertains to date of arrest, we are convinced that there is an infraction of constitutional safeguard ingrained in Clause (5) of Article 22 of the Constitution of India. In other words, there is infraction of constitutional safeguard to make an effective representation qua the impugned detention order. This infraction necessarily means that the impugned detention order is liable to be set aside.

11. Ergo, the sequitur is, the detention order dated 15.06.2022 bearing reference C.No.45/G/IS/Tiruppur City/2022 made by the second respondent is set aside and detenu Mr.Sheck Dhavood, aged 25 years, son of Mr.Abdullah, now detained in Central Prison, Coimbatore is directed to be set at liberty forthwith unless required in connection with any other case/s.



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Captioned HCP ordered on above terms.

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(M.S.,J.)

(M.N.K.,J.)

07.02.2023

Neutral Citation : Yes / No

gpa

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

To

1. The Principal Secretary
State of Tamil Nadu
Home, Prohibition and Excise Department
Secretariat
Chennai
2. The Commissioner of Police
Tiruppur City
Tiruppur
3. The Superintendent of Prison
Central Prison, Coimbatore
4. The Inspector of Police
Tiruppur North Police Station
Tiruppur
5. The Public Prosecutor
High Court, Madras.



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

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