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H.C.P.No.1487 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.03.2023

Coram

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

H.C.P.No.1487 of 2022

Panchavaram @ Panchavarnam
W/o.Manikandan @ Kullamani

... Petitioner/wife of the detenu

-VS-

1.The Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George, Chennai – 600 009.

2.The Commissioner of Police,
Avadi City Commissioner Office,
No.2/14, NH716, Kamarajapuram,
Ambattur, Chennai,
Tamil Nadu – 600 053.

3.The Superintendent of Prison,
Central Prison, Puzhal – II,
Chennai.

4.The Inspector of Police,
E-4, Kattur Police Station,
Thiruvallur District.

... Respondents



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Prayer: Habeas Corpus Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus calling for the records relating to the impugned order of detention dated 05.07.2022 vide Memo No.66/BCDFGISSSV/2022 passed by the second respondent herein and quash the same and consequently direct the respondents to set forth the detenu Manikandan @ Kullamani, aged 31 years now confined in Central Prison-II, Chennai, before this Court and set him at liberty.

For Petitioner	..	Mr.V.Parthiban for Mr.D.Prasanna Kumar
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 wife of detenu assailing a 'preventive detention order dated 05.07.2022 bearing reference Memo No.66/BCDFGISSSV/2022' (hereinafter 'impugned detention order' for the sake of convenience). To be noted, fourth respondent is the Sponsoring Authority.



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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.

3. There is one adverse case and one ground case. The ground case which is the substratum of the impugned detention order is Crime No.125/2022 on the file of E-4 Kattur Police Station for alleged offences under Sections 147, 148 and 302 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.V.Parthiban, 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.



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5. Notwithstanding very many averments in the support affidavit, Mr.V.Parthiban, learned counsel for petitioner pointed out that subjective satisfaction of the detaining authority regarding imminent possibility of the detenu being enlarged on bail is impaired as there is no material to substantiate the same. To be noted, relevant portions of the impugned detention order in this regard reads as follows:

'I am aware that Thiru.Manikandan is in remand in E-4 Kattur Police Station Crime No.125/2022. He has not moved any bail application for E-4 Kattur Police Station Crime No.125/2022 case. The sponsoring authority has stated that it is learnt that the relatives of Thiru.Manikandan are taking steps to take him on bail in E-4 Kattur Police Station Crime No.125/2022 case by filing bail application before the appropriate Court. Further, in a similar case, registered at R-3 Ashok Nagar P.S. Cr.No.59/2021, u/s.147, 148, 449, 324 and 302 I.P.C., bail was granted to the accused Thiru.Balaji by the Court of Principal Sessions, Chennai in CrI.M.P.No.10485/2021. Hence, I infer there is a real possibility of his coming out on bail in E-4 Kattur Police Station Crime No.125/2022 case by filing bail application before the appropriate Court, since in a similar case, the bail was granted by the Court after a lapse of time.'



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Learned counsel submitted that there are two parts to the subjective satisfaction. One is regarding steps being taken by relatives and the other part is bail being granted in another what according to the detaining authority is similar case. As regards the first part, learned counsel adverting to pages 216 and 217 of the grounds of detention booklet submits that it appears from the statement of wife of detenu that she is taking steps to move bail application (page 216) and there is a Special Report (page 217). Learned counsel submitted that both are undated. Even the signatures do not show the date on which the same have been signed. It was also pointed out that in page 216, the statement said to have been taken from detenu's wife says that she is taking steps. The impugned detention order in very generic terms says 'relatives of Thiru.Manikandan', therefore, the lack of specificity also impairs the subjective satisfaction is his say.

6. As regards what according to the detaining authority is similar case, adverting to page 209 of the booklet, learned counsel submitted that order dated 26.05.2021 in CrI.M.P.No.10485 of 2021 in page 209 is not really a similar case as that was a matter where bail was granted owing to Covid-19 situation.



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7. Responding to the above arguments learned Additional Public Prosecutor submitted that there is a statement from the wife and Covid-19 situation does not make it a dissimilar case. Learned Additional Public Prosecutor also submitted that statement from the detenu's wife as well as Special Report were before the detaining authority.

8. We have carefully considered the rival submissions.

9. As regards statement from wife and the Special Report, they are undated. Therefore whether the statement can be relied on itself is doubtful. It is also to be noted that in the case on hand question is not whether the statement was before the detaining authority at the time of making impugned detention order but it is a question of whether the statement is good enough for the detaining authority to arrive at subjective satisfaction that there is imminent possibility of detenu being enlarged on bail.

10. We find that the statement said to have been taken from wife of detenu and the Special Report are not good enough for such subjective



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satisfaction as both documents are completely undated and signatures also do not bear dates as rightly pointed out by learned counsel for petitioner.

11. This buttresses the fact that detaining authority in the impugned detention order did not refer that wife of the detenu is taking steps but it has been mentioned in very generic terms that relatives of the detenu are taking steps. To be noted, this point is sustained owing to other attendant facts and circumstances of this case and therefore it would not serve as precedent in all and every case. Such matters have to be dealt with on a case to case basis is a caveat which we have been repeatedly pointing out in several H.C.P. orders.

12. As regards the cases being dissimilar, we do not embark upon the exercise of comparing two cases as the first point itself is sustained.

13. Ergo, the sequitur is, H.C.P. No.1487 of 2022 is allowed, impugned detention order dated 05.07.2022 bearing reference Memo No.66/BCDFGISSSV/2022 made by the second respondent is set aside and detenu Mr.Manikandan, male, aged 31 years, son of Mr.Bose, now detained



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in Central Prison-II, Puzhal, 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.)
01.03.2023

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

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

To

- 1.The Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George, Chennai – 600 009.
- 2.The Commissioner of Police,
Avadi City Commissioner Office,
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Ambattur, Chennai,
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- 3.The Superintendent of Prison,
Central Prison, Puzhal – II,
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4.The Inspector of Police,
E-4, Kattur Police Station,
Thiruvallur District.

5.The Public Prosecutor,
Madras High Court,
Chennai – 104.



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