



H.C.P.No.1498 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.03.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

H.C.P.No.1498 of 2022

B.Sarath Kumar
S/o.Bala Murugan

.. Petitioner

Vs.

1. The Additional Chief Secretary to Government
Home, Prohibition and Excise Dept.,
Secretariat
Chennai-600 009.
2. The Commissioner of Police
Avadi City.
3. The Superintendent of Prison
Central Prison
Puzhal, Chennai-66.
4. The Inspector of Police, Law and Order
T-14, Mangadu Police Station
Chennai.

.. 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 second respondent dated 19.07.2022 in Memo No.77/BCDFGISSSV/2022 against the petitioner's friend Vinothkumar, male aged 26 years, s/o.Moorthy, who is confined at Central Prison, Puzhal, Chennai and set aside the same and direct the respondents to produce the detenu before the Hon'ble Court and set him at liberty.

For Petitioner	:	Mr.S.Senthilvel
For Respondents	:	Mr.R.Muniyapparaj Additional Public Prosecutor assisted by Mr.M.Sylvester John, Advocate

ORDER

[Order of the Court was made by N.ANAND VENKATESH, J.,]

Captioned 'Habeas Corpus Petition' ['HCP' for the sake of brevity] has been filed by friend of the detenu assailing a 'preventive detention order dated 19.07.2022 bearing reference No.77/BCDFGISSSV/2022' [hereinafter 'impugned detention order' for the sake of convenience and brevity]. To be noted, fourth respondent is the sponsoring authority and second respondent is the detaining authority as the impugned detention order has been made by the second respondent.



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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 are three adverse cases and one ground case. The ground case which is the sole substratum of the impugned detention order is Crime No.471 of 2022 on the file of T-14 Mangadu Police Station for the alleged offences under Sections 294(b), 336 and 506(ii) of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] read with Section 4(a) of Indian Explosive Substances Act 1908.

4. Mr.S.Senthilvel, learned counsel on record for petitioner and Mr.R.Muniyapparaj, learned State Additional Public Prosecutor assisted by Mr.M.Sylvester John, learned counsel for all respondents are before us.



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5. The main ground that was urged by the learned counsel for the petitioner is that the Detaining Authority after being aware of the fact that the detenu had not filed any bail applications in one adverse case and in ground case, came to the conclusion that there is likelihood of the detenu coming out on bail, even without placing reliance upon any materials and hence, it was contended that the impugned detention order suffers from non-application of mind.

6. There are totally three adverse cases and one ground case against the detenu. In one of the adverse case in Crime No.405 of 2022, the detenu was in remand. Apart from that, the detenu was also in remand in the ground case in Crime No.471 of 2022. In both these cases, the detenu had not filed any bail applications and this was taken note of by the Detaining Authority in the impugned detention order. In spite of the same, the Detaining Authority came to the conclusion that there is imminent possibility of the detenu coming out on bail and while coming to such conclusion, the Detaining Authority has not even placed reliance upon any materials. The Apex Court in ***Rekha*** case [***Rekha Vs. State of Tamil Nadu through***



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Secretary to Government and another reported in **(2011) 5 SCC 244]** has categorically held that the Detaining Authority cannot merely state that in a similar case bail is granted by the Courts, without there being any other material and if such orders are passed, the detention order will suffer from non-application of mind. The facts of the present case is squarely covered by judgment of **Rekha** case referred to supra. For proper appreciation, paragraph No.27 of **Rekha** case is extracted hereunder:

'27. In our opinion, there is a real possibility of release of a person on bail who is already in custody provided he has moved a bail application which is pending. It follows logically that if no bail application is pending, then there is no likelihood of the person in custody being released on bail, and hence the detention order will be illegal. However, there can be an exception to this rule, that is, where a co-accused whose case stands on the same footing had been granted bail. In such cases, the detaining authority can reasonably conclude that there is likelihood of the detenu being released on bail even though no bail application of his is pending, since most courts normally grant bail on this ground. However, details of such alleged similar cases must be given, otherwise the bald statement of the authority cannot be believed.'



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7. In view of the same, the impugned detention order is liable to be interfered with by this Court.

8. Before concluding, we also remind ourselves that preventive detention is not a punishment and HCP is a high prerogative writ.

9. Apropos, the sequitur is, captioned HCP is allowed. Impugned detention order dated 19.07.2022 bearing reference No.77/BCDFGISSSV/2022 made by the second respondent is set aside and the detenu Thiru.Vinothkumar, aged 26 years, son of Thiru.Moorthy, is directed to be set at liberty forthwith, if not required in connection with any other case / cases. There shall be no order as to costs.

(M.S.,J.)

(N.A.V.,J.)

21.03.2023

Index : Yes / No

Speaking / Non-speaking

Neutral Citation : Yes / No

mk

P.S: Registry to forthwith communicate this order to Jail authorities in

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Central Prison, Puzhal, Chennai.

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To

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2. The Commissioner of Police
Avadi City.
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4. The Inspector of Police, Law and Order
T-14, Mangadu Police Station
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5. The Public Prosecutor
High Court, Madras.



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