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H.C.P.No.1511 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.03.2023

CORAM

THE HONOURABLE MR.JUSTICE **M.SUNDAR**
and
THE HONOURABLE MR.JUSTICE **M.NIRMAL KUMAR**

H.C.P.No.1511 of 2022

S.Sasikala

.. Petitioner

Vs

1. The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Fort St.George, Chennai - 600 009.
2. The Commissioner of Police
Greater Chennai,
Office of the Commissioner of Police,
Vepery, Chennai.
3. The Additional Superintendent of Police,
Central Prison II,
Puzhal, Chennai.
4. The Inspector of Police,
F-5, Choolaimedu Police Station,
Chennai.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus to call for the records pertaining to the order of detention passed by the second respondent in his proceedings in No.209/BCDFGISSSV/2022 dated 22.07.2022 and

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quash the same as illegal and produce the detenu namely Dinesh @ Dinesh Kumar, S/o.Sankar, aged 26 years, as Goonda, now he is confined in Central Prison, Puzhal II before this Court and set him at liberty.

For Petitioner : Mr.S.Lokesh
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 the mother of detenu assailing a 'preventive detention order dated 22.07.2022 bearing reference No.209/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 impugned detention order has been made by second respondent.

2. Impugned detention order has been made under 'The Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Cyber law

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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 two adverse cases. The ground case which is the sole substratum of the impugned detention order is Crime No.235 of 2022 on the file of F-5 Choolaimedu Police Station for alleged offences under Sections 341, 294(b), 323, 392, 397, 336, 427 and 506 (ii) of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity]. 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.S.Lokesh, learned counsel 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. Notwithstanding very many grounds urged/raised in the support affidavit, Mr.S.Lokesh, learned counsel for petitioner predicates his campaign against the impugned detention order on one point and that point turns on subjective satisfaction of the detaining authority pertaining to imminent possibility of the detenu being enlarged on bail. Adverting to paragraph 4 of the impugned detention order, learned counsel submits that the detaining authority has arrived at subjective satisfaction in this regard by saying that the relatives of the detenu are taking steps to take him out on bail. In this regard, learned Additional Public Prosecutor drew our attention to pages 287 and 289 of the 'booklet' containing the grounds of detention ('said booklet' for the sake of convenience and clarity). Page 287 is a Section 161(3) of 'The Code of Criminal Procedure, 1973 (2 of 1974)' [hereinafter 'Cr.PC' for the sake of convenience and clarity] statement from Sasikala (mother of the detenu). Page 289 is a special report from the jurisdictional Inspector of Police i.e., fourth respondent, who is the sponsoring authority. This statement as well as special report does not contain any date. This by itself vitiates the very veracity of the statement and the special report. Therefore, we have no difficulty in accepting the

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submission that the subjective satisfaction arrived at by the detaining authority with regard to imminent possibility of the detenu being enlarged on bail is impaired and perilled. Therefore, the impugned detention order deserves to be dislodged.

6. Ergo, the sequitur is, the captioned HCP is allowed and the impugned detention order dated 22.07.2022 bearing reference No.209/BCDFGISSSV/2022 made by the second respondent is set aside and detenu Mr.Dinesh @ Dinesh Kumar, male, aged about 26 years, S/o. Sankar, now detained in Central Prison, 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.)
14.03.2023

Index : Yes / No

Neutral Citation : Yes / No

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

To

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

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2. The Commissioner of Police
Greater Chennai,
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Vepery, Chennai.
3. The Additional Superintendent of Police,
Central Prison II,
Puzhal, Chennai.
4. The Inspector of Police,
F-5, Choolaimedu Police Station,
Chennai.
5. The Public Prosecutor,
High Court, Madras.



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and
M.NIRMAL KUMAR, J.,**

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