



H.C.P.No.1540 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.03.2023

CORAM

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

H.C.P.No.1540 of 2022

S.Elumalai

..

Petitioner

Vs.

1.The Secretary to the Government,
Home, Prohibition and Excise Department,
Secretariat, Fort St. George, Chennai - 9.

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,
Team – 31, Bank Fraud Investigation Wing,
CCB – I, 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.203/BCDFGISSSV/2022, dated 18.07.2022 and quash the same as illegal and produce the detenu namely E.Moorthy, S/o.Elumalai, aged 40 years, as GOONDA, now he is confined in Central Prison, Puzhal II, before this Court and set him at liberty.



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For Petitioner : Mr.R.Ganesh
For Respondents : Mr.E.Raj Thilak
Additional Public Prosecutor

ORDER

[Order of the Court was made by **M.NIRMAL KUMAR, J.,**]

Captioned 'Habeas Corpus Petition' ['HCP' for the sake of brevity] has been filed by father of detenu assailing a 'preventive detention order dated 18.07.2022 bearing reference No.203/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 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 is one adverse case. The ground case which is the sole substratum of the impugned detention order is Crime No.129 of 2022 on the file of Central Crime Branch-I for alleged offences under Section 120B r/w 420, 465, 467, 468 and 471 of I.P.C. 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.R.Ganesh, learned counsel representing counsel on record for petitioner and Mr.E.Raj Thilak, learned Additional Public Prosecutor for all respondents are before us.

5. Though several grounds were raised by the petitioner, learned counsel for petitioner, referring to page 706 of the booklet submitted that the detaining authority had passed the detention order as though the detenu was shown formally arrested in the adverse case in Crime No.57 of 2020. The detenu was arrested on 26.04.2022 in Crime No.57 of 2020 and he was formally arrested in Crime No.129 of 2022 on 28.06.2022. Learned counsel submitted that the formal arrest has



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been shown in the adverse case which clearly shows non-application of mind on the part of the detaining authority, thereby on this ground alone, the impugned detention order can be quashed. He further submitted that the bank transaction had taken place in the year 2017, after five years, it became NPA, thereafter, complaint has been lodged and there is no live and proximate link to clamp the order of detention.

6. Learned Additional Public Prosecutor submits that the detenu had cheated a bank to the tune of more than Rs.2 crores thereby public money has been misappropriated. He further submitted that the detenu was doing several transactions and he is having working knowledge. Learned Additional Public Prosecutor submitted that the formal arrest shown in Crime No.57 of 2020 is only a typographical error and instead of referring to ground case in Ref. No.1, it has been referred as Ref. No.2, which is the adverse case.

7. We are of the view that in the arrest intimation memo and the particulars submitted to the Court more particularly page 706 of the booklet, it is referred that the detenu has been shown formally arrested in the adverse case which clearly depicts non-application of mind on the part of the detaining authority. This has not been clarified



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further. In view of the same, we are of the view that the detention order is liable to be quashed.

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

9. In the result, captioned HCP is allowed. Impugned detention order dated 18.07.2022 bearing reference No.203/BCDFGISSSV/2022 made by the second respondent is set aside and the detenu Thiru.Moorthy, male, aged 40 years, son of Thiru.Elumalai 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.) (M.N.K.,J.)
13.03.2023

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.

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High Court, Madras.



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and
M.NIRMAL KUMAR, J.,**

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