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H.C.P.No.1582 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.03.2023

Coram

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

H.C.P.No.1582 of 2022

R.Vijaya

... Petitioner/Mother of the Detenu

-VS-

1.The State of Tamil Nadu,
Rep. by the Secretary to the Government,
Prohibition and Excise Department,
Fort St. George,
Chennai – 600 009.

2.The Commissioner of Police,
Greater Avadi City,
Chennai – 600 054.

3.The Inspector of Police,
E-5 Sholavaram Police Station,
Chennai – 600 067.

4.The Superintendent of Prison,
Central Prison Puzhal,
Chennai.

... Respondents

Prayer: Habeas Corpus Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus calling for the records pertaining to the in Memo No.65/BCDFGIISSSV/2022 dated 05.07.2022 on the file of



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the 2nd respondent herein and set aside the same and direct the respondents herein to produce the petitioner's son VIGNESHWARAN @ VICKY, Son of Rajendran, aged 27 years, now confined in the Central Prison, Puzhal, Chennai before the this Court and set him at liberty.

For Petitioner	..	Mr.C.K.M.Appaji
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 mother of detenu assailing a 'preventive detention order dated 05.07.2022 bearing reference Memo No.65/BCDFGISSSV/2022' (hereinafter 'impugned detention order' for the sake of convenience). To be noted, third respondent is the sponsoring authority and second respondent is the detaining authority as the impugned detention order has been made by 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 four adverse cases and one ground case. The ground case which is the substratum of the impugned detention order is Crime No.437/2022 on the file of E-5 Sholavaram Police Station for alleged offences under Sections 341, 294(b), 392, 397, 336 and 506(ii) of 'Indian Penal Code, 1860 (Act 45 of 1860)' ['IPC' for brevity] and Section 3 of 'Tamil Nadu Property (Prevention of Damage and Loss) Act, 1992' ['TNPPDL' 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.



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4. Mr.C.K.M.Appaji, 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.

5. Notwithstanding very many averments in the support affidavit learned counsel for petitioner points out that in the impugned detention order the detaining authority has relied on bail that was granted in a similar case in Crime No.43/2018 on the file of J-4 Kotturpuram Police Station for alleged offences under Sections 294(b), 341, 323, 397, 336, 427 and 506(ii) of IPC. Learned counsel points out that ground case is Crime No.437/2022 on the file of E-5 Sholavaram Police Station. In the ground case the alleged offences include an offence under Section 3 of 'TNPPDL' Act. Learned counsel submits that the cases are dissimilar.

6. In response to the above arguments learned Additional Public Prosecutor submits that Section 397 of 'IPC' is there in the similar case.

7. We have carefully considered the rival contentions. We find that offence under Section 3 of 'TNPPDL' Act stands on a different footing and therefore comparing these two cases tantamounts to comparing Apples and



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Oranges. This means that subjective satisfaction arrived at by the detaining authority for saying that there is imminent possibility of detenu being enlarged on bail is impaired. Therefore, the further sequitur is impugned detention order deserves to be dislodged.

8. Ergo, the sequitur is, H.C.P. No.1582 of 2022 is allowed, impugned detention order dated 05.07.2022 bearing reference Memo No.65/BCDFGISSSV/2022 made by the second respondent is set aside and detenu Mr.Vigneshwaran @ Vicky, male, aged 27 years, son of Mr.Rajendran, 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.)
07.03.2023

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

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



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

rsi

To

- 1.The Secretary to the Government,
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Chennai – 600 009.
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High Court, Madras.

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