



WEB COPY



H.C.P.No.1685 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.1685 of 2022

Reena
W/o.Mannu

.. Petitioner

Vs.

1. State of Tamil Nadu
Rep. by the Additional Chief Secretary to Government
Home, Prohibition and Excise Department
Fort St.George, Chennai-600 009.
2. The Commissioner of Police
The Greater Chennai City
Vepery, Chennai-600 007.
3. The Superintendent of Prison
Central Prison, Puzhal
Chennai-600 066.
4. The Inspector of Police
R-6, Kumaran Nagar Police Station
Chennai.

.. Respondents



H.C.P.No.1685 of 2022

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus to call for the records relating to the detention order in Memo No.233/BCDFGISSSV/2022 dated 02.08.2022 passed by the 2nd respondent under the Tamil Nadu Act 14 of 1982 and set aside the same and direct the respondents to produce the petitioner's son Karthick @ Kotta Karthick, son of Mannu aged about 26 years the detenu now confined in Central Prison, Puzhal, Chennai before this Hon'ble Court and set the petitioner's son Karthick @ Kotta Karthick, son of Mannu aged about 26 years the detenu herein at liberty.

For Petitioner	:	Mr.S.Senthilvel representing Mr.N.S.Amarnath
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 mother of detenu assailing a 'preventive detention order dated 02.08.2022 bearing reference BCDFGISSSV No.233/2022' [hereinafter 'impugned detention order' for the sake of convenience and brevity]. To be



H.C.P.No.1685 of 2022

noted, fourth respondent is the sponsoring authority and second respondent is the detaining authority as the 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.

3. There are four adverse cases and one ground case. The ground case which is the sole substratum of the impugned detention order is Crime No.226 of 2022 on the file of R-6 Kumaran Nagar Police Station for the alleged offences under Sections 294(b), 323, 392, 397, 427, 336 and 506(ii) of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity].



H.C.P.No.1685 of 2022

WEB COPY

4. Mr.S.Senthilvel, learned counsel representing the 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.

5. The main ground that was urged by the learned counsel for the petitioner is that there are four adverse cases and a ground case against the detenu. Out of the same, the detenu was in remand in two adverse cases and in the ground case. The Detaining Authority was aware of the fact that the bail applications filed in two adverse cases was pending and no bail application was filed insofar as the ground case is concerned. While so, the Detaining Authority came to the conclusion that there is likelihood of the detenu coming out on bail by relying upon the order dated 18.05.2022 passed in CrI.M.P.No.6033 of 2022 by XVII Metropolitan Magistrate, Saidapet and order dated 27.10.2021 in CrI.M.P. No.19198 of 2021 by the learned Principal Sessions Judge, Chennai. According to the learned counsel for the petitioner, these two cases cannot be considered to be similar cases



H.C.P.No.1685 of 2022

and hence, the impugned detention order suffers from non-application of mind.

6. There are four adverse cases against the detenu and one ground case. Insofar as two adverse cases namely, Crime No.173 of 2022 and Crime No.225 of 2022 are concerned, the detenu continues to be in remand and bail applications filed by him in these two adverse cases were pending. That apart, in ground case in Crime No.226 of 2022, the detenu had not filed any bail application and the same was taken note by the Detaining Authority.

7. The Detaining Authority relied upon the order dated 18.05.2022 passed in CrI.MP.No.6033 of 2022 by XVII Metropolitan Magistrate, Saidapet and order dated 27.10.2021 passed in CrI.M.P. No.19198 of 2021 by the learned Principal Sessions Judge, Chennai and came to the conclusion that there is imminent possibility of the detenu coming out on bail.

8. We have carefully considered the orders that were relied upon by



H.C.P.No.1685 of 2022

the Detaining Authority. Insofar as Crl.M.P.No.6033 of 2022 is concerned, the same pertains to a case which was registered for the offences under Sections 294(b), 324 and 506(ii) of IPC. While granting bail to the accused therein, the concerned Court took into consideration the incarceration already suffered by the accused therein. There is also no indication about any previous case against the accused therein. This order was relied upon by the Detaining Authority to come to the conclusion that the detenu will come out on bail in two adverse cases. The adverse case in Crime No.169 of 2022 was registered for the offences under Section 341, 294(b), 323, 336, 392 read with 397 and 506(ii) of IPC. The adverse case in Crime No.225 of 2022 was registered for the offences under Sections 341, 294(b) and 506(ii) of IPC read with Section 4 of the Tamil Nadu Prohibition of Harassment of Woman (Amendment) Act, 2002. These two cases are not similar to the case that was dealt with in Crl.MP.No.6033 of 2022. The order of the Detaining Authority relying upon the order passed in Crl.MP.No.6033 of 2022 clearly suffers from non-application of mind since the facts involved in the two adverse cases are not relatable to the facts that were involved in Crl.M.P.No.6033 of 2022.



H.C.P.No.1685 of 2022

WEB COPY

9. Insofar as the ground case is concerned, the same was registered in Crime No.226 of 2022 for the offences under Sections 294(b), 323, 392, 397, 427, 336 and 506(ii) of IPC. The Detaining Authority had relied upon the order dated 27.10.2021 passed in CrI.MP.No.19198 of 2021 to come to the conclusion that there is imminent possibility of the detenu coming out on bail. The detenu had not filed any bail application insofar as the ground case is concerned and the order that was relied upon by the Detaining Authority concerns an accused who had one previous case against him and the concerned Court also took into consideration the incarceration already suffered by the accused therein and also the fact that the injured was discharged from the hospital. This order cannot be treated to be a similar case since the detenu in this case had four adverse cases against him. Hence, the order that was relied upon by the Detaining Authority insofar as the ground case is concerned, also suffers from non-application of mind.



H.C.P.No.1685 of 2022

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

11. Apropos, the sequitur is, captioned HCP is allowed. Impugned detention order dated 02.08.2022 bearing reference No.BCDFGISSSV No.233/2022 made by the second respondent is set aside and the detenu Thiru.Karthick @ Kotta Karthick, aged 26 years, son of Thiru.Mannu, 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 Central Prison, Puzhal, Chennai.



H.C.P.No.1685 of 2022

WEB COPY

To

1. State of Tamil Nadu
Rep. by the Additional Chief Secretary to Government
Home, Prohibition and Excise Department
Fort St.George, Chennai-600 009.
2. The Commissioner of Police
The Greater Chennai City
Vepery, Chennai-600 007.
3. The Superintendent of Prison
Central Prison, Puzhal
Chennai-600 066.
4. The Inspector of Police
R-6, Kumaran Nagar Police Station
Chennai.
5. The Public Prosecutor
High Court, Madras.

M.SUNDAR, J.,
and

Page Nos.9/10



WEB COPY



H.C.P.No.1685 of 2022

N.ANAND VENKATESH, J.,

mk

H.C.P.No.1685 of 2022

21.03.2023

Page Nos.10/10