



H.C.P.No.1710 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.03.2023

CORAM

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

H.C.P.No.1710 of 2022

Alli

.. Petitioner

Vs

- 1.The State of Tamil Nadu rep. By
Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George, Chennai - 9.
- 2.The Commissioner of Police,
Avadi City,
Office of the Commissioner of Police,
(Goondas Section), Avadi, Chennai – 54.
- 3.The Superintendent of Police,
Central Prison, Puzhal, Chennai.
- 4.The Inspector of Police,
E5 Sholavaram Police Station,
Chennai – 67.

.. 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 relating to the detention order dated 23.07.2022 passed by the second respondent in BCDFGISSSV No.88 of 2022 and quash the same and direct the respondents herein to produce the petitioner's son Appuraj

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@ Appu, son of Anbazhagan, aged 28 years, who is presently undergoing detention in the Central Prison, Puzhal, before this Court and set him at liberty forthwith.

For Petitioner : Ms.M.Udayavani
for Mr.P.Chandrasekar

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 23.07.2022 bearing reference BCDFGISSSV No.88 of 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 four adverse cases. The ground case which is the sole substratum of the impugned detention order is Crime No.489 of 2022 on the file of E-5 Sholavaram Police Station for the alleged offences under Sections 294(b), 307 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. Ms.M.Udayavani, learned counsel representing Mr.D.Balaji, 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. We are informed that a co-accused in the ground case was also clamped with a similar preventive detention order i.e., preventive detention order akin to the impugned preventive detention order. We are further informed that the co-accused moved this Court vide HCP No.1654 of 2022 and the same was allowed by this Bench in and by an order dated 08.03.2022 and the said order reads as follows:

'Captioned 'Habeas Corpus Petition' [hereinafter 'HCP' for the sake of convenience and brevity] has been filed by the detenu assailing 'detention order dated 23.07.2022 bearing reference Memo No. 89/BCDFGISSSV/2022' [hereinafter 'impugned detention order' for the sake of convenience]. To be noted, the fourth respondent is the sponsoring authority and the second respondent is the detaining authority as impugned detention order has been made by the 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



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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 and one ground case. The ground case which is the substratum of the impugned detention order is Crime No.489 of 2022 on the file of E-5 Sholavaram Police Station for alleged offences under Sections 294(b), 307 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.M.Mohamed Saifulla, learned counsel for petitioner and Mr.R.Muniyapparaj, learned Additional Public Prosecutor assisted by Mr.M.Sylvester John learned counsel for respondents are before us.

5. Notwithstanding very many averments/grounds in the support affidavit qua captioned HCP, Mr.M.Mohamed Saifulla, learned counsel for petitioner advertent to Page No.97 of the booklet containing the grounds of detention submits that it is described as a statement of mother of the detenu and it is also described as a statement under Section 161(3) of 'The Code of Criminal Procedure, 1973 (2 of 1974)' [hereinafter 'Cr.PC' for the sake of convenience and clarity]. There is no signature and there is no date for this statement. Likewise, a special report in



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this regard at Page No.98 of the booklet also does not contain date or signature. We have already taken the view that this phenomenon causes impairment of the detenu's sanctus right to make an effective representation against the impugned detention order. To be noted, this sanctus right of the detenu is a constitutional safeguard ingrained in Clause (5) of Article 22 of the Constitution of India. This by itself is good enough to interfere with the impugned detention order.

6.Ergo, the sequitur is, captioned HCP is allowed and the detention order dated 23.07.2022 bearing reference Memo No.89/BCDFGISSSV/2022 made by the second respondent is set aside and the detenu Thiru.Vignesh, aged 24 years, son of Thiru.Selvam is directed to be set at liberty forthwith unless required in connection with any other case. There shall be no order as to costs.'

6. There is no disputation or contestation before us that the same point on which the aforementioned HCP was allowed is available to the detenu in the case on hand also. Therefore, we are reminded of the age old adage 'Sauce to Goose is sauce to Gander too'. We find from the booklet that while the page numbers in the aforementioned case are pages 97 and 98, the page numbers in the case on hand are 174 and 175. Therefore, it is axiomatic and it follows as a corollary



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that captioned HCP i.e., case on hand has to be allowed.

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7. Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 23.07.2022 bearing reference BCDFGISSSV No.88 of 2022 made by the second respondent is set aside and the detenu Thiru.Appuraj @ Appu, male, aged 28 years, son of Thiru.Anbazhagan 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.)
15.03.2023

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,
Fort St. George, Chennai - 9.

2.The Commissioner of Police,
Avadi City,

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Office of the Commissioner of Police,
(Goondas Section), Avadi, Chennai – 54.

3.The Superintendent of Police,
Central Prison, Puzhal, Chennai.

4.The Inspector of Police,
E5 Sholavaram Police Station,
Chennai – 67.

5.The Public Prosecutor,
High Court, Madras.



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

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