



H.C.P.No.1728 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.03.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

H.C.P.No.1728 of 2022

Malliga Kannan
W/o.Kannan

.. Petitioner

Vs.

1. The State represented by its
The Additional Chief Secretary to Government (Home)
Prohibition and Excise Department
Government of Tamilnadu
Fort St.George, Chennai-600 009.
2. The District Magistrate and
The District Collector
Namakkal District.
3. The Superintendent of Police
Namakkal District
Namakkal.
4. The Superintendent of Police
Central Prison
Salem.

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5. The Inspector of Police
Namakkal Police Station
Namakkal, Namakkal Taluk & District. .. 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 dated 08.08.2022 passed by the 2nd respondent in C.M.P.No.21/GOONDA/2022 (M1) and quash the same and produce the Karpoorapriyan @ Sri Karpoorapriyan aged about 20 years, has been detained as Goonda in C.M.P.No.21/GOONDA/2022 (M1), detained at Central Prison, Salem before this Hon'ble Court and set him at liberty.

For Petitioner	:	Dr.S.Manoharan
For Respondents	:	Mr.R.Muniyapparaj Additional Public Prosecutor assisted by Mr.N.Narkeeran, 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 08.08.2022 bearing reference C.M.P.No.21/GOONDA/2022(M1)' [hereinafter 'impugned detention order' for the sake of convenience and brevity]. To be noted, fifth respondent is the sponsoring authority and



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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 is no adverse case. The ground case which is the sole substratum of the impugned detention order is Crime No.292 of 2022 on the file of Namakkal Town Police Station for the alleged offences under Sections 449 and 302 of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] and subsequently, altered into Sections 147, 148, 449, 427 and 302 of IPC.



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4. Dr.S.Manoharan, learned counsel on record for petitioner and Mr.R.Muniyapparaj, learned State Additional Public Prosecutor assisted by Mr.N.Narkeeran, learned counsel for all respondents are before us.

5. The main ground which was raised by the learned counsel for the petitioner is that the Detaining Authority after being aware of the fact that the detenu has not filed any bail application, came to the conclusion that there is likelihood of the detenue being released on bail by relying on an order dated 30.10.2019 passed in C.M.P.No.1781 of 2019, on the file of Principal Sessions Court, Namakkal. It was pointed out that the order that was relied upon by the Detaining Authority does not pertain to a similar case and hence, the impugned detention order suffers from non-application of mind.

6. The detenu in this case was arrested in the course of investigation in Crime No.292 of 2022 for the offences under Sections 147, 148, 449, 427 and 302 of IPC and the detenu has been arrayed as A2 in this case. The



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Detaining Authority was aware of the fact that the detenu has not filed any bail application. In spite of the same, the Detaining Authority relied upon the order dated 30.10.2019 passed in C.M.P.No.1781 of 2019 and came to the conclusion that there is imminent possibility of the detenu being enlarged on bail. On carefully going through the order that was relied on by the Detaining Authority, it is seen that it was a case where there was a fight between two persons under the influence of alcohol and the accused therein had already suffered incarceration for nearly 80 days. Taking into consideration these grounds, learned Principal Sessions Judge, Namakkal had enlarged the accused therein on bail. This order relied upon by the Detaining Authority will not apply to the facts of the present case and it is not a similar case as projected by the Detaining Authority.

7. In view of the same, the impugned detention order suffers from non-application of mind.

8. The learned Additional Public Prosecutor, on instructions, submitted that the detenu was arrested in the course of investigation on



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12.07.2022. Ultimately, investigation was completed and final report was filed on time i.e., on 24.09.2022. Subsequently, the case has been committed and it has been taken on file by the learned Additional District and Sessions Judge, Namakkal in S.C.No.37 of 2023.

9. In view of the fact that the final report has been filed on time, if any bail application is filed by the detenu, the same shall be considered by the trial Court on its own merits and in accordance with law without being influenced by the order passed in this HCP.

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 08.08.2022 bearing reference C.M.P.No.21/GOONDA/2022 (M1) made by the second respondent is set aside and the detenu Thiru.Karpoorapriyan @ Sri Karpoorapriyan, aged 20 years, son of Kannan is directed to be set at liberty forthwith, if not required



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in connection with any other case / cases. There shall be no order as to costs.

(M.S.,J.)

(N.A.V.,J.)

20.03.2023

Index : Yes

Speaking

Neutral Citation : Yes

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



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M.SUNDAR, J.,
and
N.ANAND VENKATESH, J.,

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To

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6. The Public Prosecutor
High Court, Madras.

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