



H.C.P.No.1774 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.02.2023

CORAM :

THE HONOURABLE MR.JUSTICE M.SUNDAR

AND

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

H.C.P.No.1774 of 2022

Janu Mariya @ Jansy Elizabeth Mary
W/o.Arivuprakash @ Arivu

...Petitioner
Wife of the detenu

Vs.

- 1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai – 600 009.
- 2.The Commissioner of Police/Detaining Authority,
Tiruppur City.
- 3.The Superintendent of Prison,
Central Prison of Coimbatore,
Coimbatore.
- 4.The Inspector of Police,
Nallur Police Station,
Tiruppur District.

...Respondents



H.C.P.No.1774 of 2022

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus calling for the records relating to the detention order in C.No.50/G/IS/TIRUPPUR CITY/2022, dated 06.07.2022 passed by the second respondent under the Tamil Nadu Act 14 of 1982 and set aside the same and direct the respondents to produce Arivuprakash @ Arivu S/o. Ramalingam, aged about 26 years, the detenu, now confined in Central Prison at Coimbatore before this Court and set him at liberty.

For Petitioner : Mr.S.Mohamed Ansari
for Mr.R.Rajprabhu

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' [hereinafter 'HCP' for the sake of brevity] has been filed by wife of the detenu assailing a 'detention order dated 06.07.2022 bearing reference No.50/G/IS/TIRUPPUR CITY/2022' [hereinafter 'impugned detention order' for the sake of brevity and convenience] made by the 'jurisdictional Commissioner of Police, i.e.,

Page Nos. 2/8



H.C.P.No.1774 of 2022

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second respondent' [hereinafter 'Detaining Authority' for the sake of brevity and convenience]. To be noted, fourth respondent who is the jurisdictional Inspector of Police is the Sponsoring Authority.

2.The impugned detention order has been made on the premise that the detenu is a 'Goonda' within the meaning of Section 2(f) of '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].

3.Mr.S.Mohamed Ansari, learned counsel representing the counsel on record Mr.R.Rajprabhu and Mr.R.Muniyapparaj, learned State Additional Public Prosecutor assisted by Mr.M.Sylvester John, for all the four respondents are before us.



H.C.P.No.1774 of 2022

WEB COPY

4. Though several points have been raised in the affidavit filed in support of HCP, one point on which challenge to the impugned detention order is predicated finds favour with us and that one point turns on imminent possibility of the detenu being enlarged on bail. In this regard, paragraph 5 of the impugned detention order assumes significance and the same reads as follows:

'I am aware that now Arivuprakash alias Arivu lodged at District Prison, Tiruppur, as a remand prisoner in Tiruppur City, Nallur Police Station Crime No.360/2022 case and his remand period of the above case has been extended till 15.07.2022. I am aware that Arivuprakash alias Arivu has not moved any bail petition in the above case till the date. However I am also aware that there is a possibility coming out on bail in future by filing bail petition before the same concerned Court in future.'

5. A careful perusal of the aforementioned paragraph 5 of the impugned detention order makes it clear that the Detaining Authority in one breath says detenu has not moved any bail petition until the date of the



H.C.P.No.1774 of 2022

WEB COPY

impugned detention order and in the same breath Detaining Authority also says that there is a possibility of detenu coming out on bail in future by filing bail petition before the Trial Court. This by itself is a good ground to interfere with the impugned detention order. However, a further legal drill by looking into the grounds of detention brings to light that there was no material before the Detaining Authority for arriving at such subjective satisfaction. In other words, to put it differently, we find that there is no statement that has been recorded by any friend or relative to suggest that any efforts are being taken to move bail for the detenu qua ground case. This means that subjective satisfaction arrived at by the Detaining Authority is clearly vitiated by lack of adequate material to arrive at such conclusion.

6.In the light of the facts and circumstances of the case on hand, taking into account the nature of the matter, we are of the view that the aforementioned point is good enough to interfere with the impugned detention order. This is more so as all that the prosecutor is able to say is that the Detaining Authority appears to have had some inputs. We are of the view that this is not good enough to sustain the impugned detention order as



H.C.P.No.1774 of 2022

WEB COPY

preventive detention is not a punishment and habeas corpus is a high prerogative writ. To be noted this conclusion is arrived at based on the facts and circumstances of the instant case and we are of the view that such points have to be tested on a case to case basis.

7.Ergo, the sequitur is, the captioned HCP is allowed and the impugned detention order dated 06.07.2022 bearing reference No.50/G/IS/TIRUPPUR CITY/2022 made by the second respondent is set aside and detenu Mr.Arivuprakash @ Arivu, male, aged about 26 years, S/o. Mr.Ramalingam, now detained in Central Prison, Coimbatore is directed to be set at liberty forthwith unless required in connection with any other case/s.

(M.S., J.) (M.N.K., J.)
27.02.2023

Index : Yes / No
Internet : Yes / No
Neutral Citation : Yes / No
cda

Page Nos. 6/8



H.C.P.No.1774 of 2022

P.S: Registry to forthwith communicate this order to jail authorities in Central Prison, Coimbatore

To

- 1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai – 600 009.
- 2.The Commissioner of Police/Detaining Authority,
Tiruppur City.
- 3.The Superintendent of Prison,
Central Prison of Coimbatore,
Coimbatore.
- 4.The Inspector of Police,
Nallur Police Station,
Tiruppur District.
- 5.The Public Prosecutor,
High Court, Madras.



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H.C.P.No.1774 of 2022

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

cda

H.C.P.No.1774 of 2022

27.02.2023

Page Nos. 8/8