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H.C.P.No.1738 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.1738 of 2022

Velanganni
W/o.A.Muthalappan

.. Petitioner

Vs.

1. The Secretary to the Government
Home, Prohibition & Excise Department
Secretariat,
Fort St.George, Chennai-600 009.
2. The Commissioner of Police / Detaining Authority
City Police Officer
Huzur Road, Coimbatore City
Coimbatore – 18.
3. The Superintendent of Police
Central Prison – Coimbatore
Coimbatore District.
4. State rep. By its
The Inspector of Police
B-3 Variety Hall Road Police Station
Coimbatore District.

.. Respondents

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Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus to call for the entire records, relating to the petitioner's father detention under Tamil Nadu Act 14 of 1982 vide detention order dated 25.08.2022 on the file of the second respondent herein made in proceedings Memo C.No.55/G/IS/2022, quash the same as illegal and consequently, direct the respondents herein to produce the petitioner's husband namely A.Muthalappan, S/o.Anbalagan, aged 31 years before this Hon'ble High Court and set the petitioner's husband at liberty from detention, now the petitioner's husband detained at Central Prison, Coimbatore.

For Petitioner	:	Mr.W.Camyles Gandhi
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 wife of detenu assailing a 'preventive detention order dated 25.08.2022 bearing reference C.No.55/G/IS/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



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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 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 'Drug Offender' within the meaning of Section 2(e) of Act 14 of 1982.

3. There is one adverse case and one ground case. The ground case which is the substratum of the impugned detention order is Crime No.153 of 2022 on the file of B-3 Variety Hall Road Police Station for alleged offences under Sections 8(c) read with 20(b)(ii)(C) and 29(1) of 'the Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985)' [hereinafter 'NDPS Act' for the sake of convenience and clarity].



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4. Mr.W.Camyles Gandhi, 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 canvassed before this Court was that the Detaining Authority was aware of the fact that no bail application was filed by the detenu till the impugned detention order was passed and in spite of the same, the Detaining Authority came to the conclusion that there is likelihood of the detenu being let out on bail by relying upon an order dated 03.09.2018 passed in C.M.P.No.643 of 2018.

6. The learned counsel for the petitioner submitted 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.



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7. The detenu in this case was arrested in the course of investigation on 29.07.2022 in Crime No.153 of 2022 for the offences under Sections 8(c) read with 20(b)(ii)(C) and 29(1) of NDPS Act. There are totally three accused persons in this case and the detenu was arrayed as A1. The Detaining Authority was aware of the fact that no bail application was filed by the detenu or on behalf of detenu. In spite of the same, the Detaining Authority by relying upon the order dated 03.09.2018 passed in C.M.P.No.643 of 2018 came to the conclusion that there is imminent possibility of the detenu being enlarged on bail.

8. We carefully went through the bail order that was relied upon by the Detaining Authority. We find that the bail application was filed by the accused therein under Section 167(2) of 'the Code of Criminal Procedure , 1973 (Act No.2 of 1974)' [hereinafter 'Cr.PC' for the sake of convenience and clarity] seeking statutory / default bail since final report was not filed within 180 days.



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9. Considering the same, learned Additional District Judge / Presiding Officer, Special Court for EC Act Cases, Coimbatore granted statutory / default bail to the accused. This order cannot be considered as a similar case since in the present case, no bail application has been filed by the detenu and Section 167(2) Cr.PC would not have come to the aid of the detenu even if he had filed a bail petition and hence, the impugned detention order suffers from non-application of mind.

10. The learned Additional Public Prosecutor, on instructions, submitted that the detenu was arrested on 29.07.2022, investigation was completed and final report was filed on time i.e., on 22.10.2022 and it was taken on file by the EC and NDPS Court in C.C.No.21 of 2023.

11. 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.

12. Before concluding, we also remind ourselves that preventive



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detention is not a punishment and HCP is a high prerogative writ.

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13. Apropos, the sequitur is, captioned HCP is allowed. Impugned detention order dated 25.08.2022 bearing reference C.No.55/G/IS/2022 made by the second respondent is set aside and the detenu Thiru.A.Muthalappan, aged 31 years, son of Thiru.Anbalagan, 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.)

20.03.2023

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, Coimbatore.



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To

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5. The Public Prosecutor
High Court, Madras.



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