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H.C.P.No.1736 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.03.2023

CORAM

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

H.C.P.No.1736 of 2022

Guna

.. Petitioner

Vs

1. The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Fort St.George, Chennai - 600 009.
2. The Commissioner of Police / Detaining Authority,
Tiruppur City,
Tiruppur District.
3. The Superintendent of Prison,
Central Prison – Coimbatore,
Coimbatore District.
4. State Rep. By its
The Inspector of Police,
Nallur Police Station,
Tiruppur 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 entire records, relating to the petitioner detention under Tamil Nadu Act 14 of 1982 vide detention order dated 18.07.2022 on the file of the second

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respondent herein made in proceedings Memo C.No.56/G/IS/Tiruppur City/2022, quash the same as illegal and consequently direct the respondents herein to produce the petitioner namely Guna, S/o. Sivakumar, aged 23 years, before this Court and set the petitioner at liberty from detention, now the petitioner detained at Central Prison, Coimbatore.

For Petitioner : Mr.J.Jayan
for Mr.W.Camyles Gandhi

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 the detenu assailing a 'preventive detention order dated 18.07.2022 bearing reference C.No.56/G/IS/Tiruppur City/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 is one adverse case. The ground case which is the sole substratum of the impugned detention order is Crime No.360 of 2022 on the file of Nallur Police Station for alleged offences under Sections 147, 148, 302 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.J.Jayan, learned counsel representing counsel on record for petitioner and Mr.R.Muniyapparaj, learned State Additional Public Prosecutor assisted by Mr.M.Sylvester John, for all respondents are before us.



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5. 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 4(i) of the impugned detention order assumes significance and the same reads as follows:

'I am aware that now Guna 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 29.07.2022. I am aware that Guna 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.'

6. A careful perusal of the aforementioned paragraph 4 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 impugned detention order and in the same breath detaining



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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) from any friend or relative suggesting 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.

7. 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. 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



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points have to be tested on a case to case basis. We are of the view that this is not good enough to sustain the impugned detention order as preventive detention is not a punishment and habeas corpus is a high prerogative writ.

8. Ergo, the sequitur is, the captioned HCP is allowed and the impugned detention order dated 18.07.2022 bearing reference C.No.56/G/IS/TIRUPPUR CITY/2022 made by the second respondent is set aside and detenu Mr.Guna, male, aged about 23 years, S/o. Sivakumar, 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.)
14.03.2023

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, Coimbatore.

To
1.The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Fort St.George, Chennai - 600 009.

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2.The Commissioner of Police / Detaining Authority,
Tiruppur City,
Tiruppur District.

3.The Superintendent of Prison,
Central Prison – Coimbatore,
Coimbatore District.

4.The Inspector of Police,
Nallur Police Station,
Tiruppur District.

5.The Public Prosecutor,
High Court, Madras.



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

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