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H.C.P.No.1757 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.03.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

H.C.P.No.1757 of 2022

P.Kamaraj
S/o.Palanimuthu

.. Petitioner

Vs.

- 1.State Represented by its
Home Secretary to the Government of Tamil Nadu,
Home Prohibition and Excise Department,
Fort St. George,
Chennai - 600 009.
- 2.The District Collector and District Magistrate,
Collectorate,
Chengalpattu District,
Chengalpattu – 603 001.
- 3.The Superintendent of Police,
Chengalpattu District,
Chengalpattu.
- 4.The Inspector of Police,
D-2, Chengalpattu Taluk Police Station,
Chengalpattu.



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5. The Superintendent of Prison,
Central Prison,
Puzhal.

.. 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 in relating to the order of Detention passed by the second respondent dated 24.07.2022 in CPT No.38/2022 against the petitioner's son the Detenu Kattimuthu, Male, aged about 22 years, son of Kamaraj, who is confined at Central Prison, Puzhal and set aside the same and direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner : Mr.R.Karthik
For Respondents : Mr.R.Muniyapparaj
Additional Public Prosecutor
assisted by
M. Sylvester John, 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 father of detenu assailing a 'preventive detention order dated 24.07.2022 bearing reference CPT No.38/2022' [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 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 constitutes a sizable chunk of the substratum of the impugned detention order is Crime No.326 of 2022 on the file of Chengalpattu Taluk Police Station for an alleged offence under Section 302 of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity].



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4. Mr.R.Karthik, learned 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.

5. The main ground that was urged by learned counsel for petitioner is that the disciplinary authority was aware of the fact that no bail petition was pending as on the date when the detention order was passed. In spite of the same, the disciplinary authority relied upon the order in C.M.P.No.2369 of 2019 passed by the Sessions Judge, Chengalpattu, dated 09.05.2019. Learned counsel submitted that the order that was relied upon does not pertain to a similar case. On this ground, learned counsel sought for quashing of the detention order.

6. The detention order has been passed based on a solitary case registered in Crime No.326 of 2022. The detenu was arrested on 27.06.2022 in the course of investigation. The disciplinary authority was aware of the fact that no bail petition was filed or pending as on the date of passing the detention order. In spite of the same, the detaining authority had relied upon



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the order passed in C.M.P.No.2369 of 2019 passed by the Sessions Judge, Chengalpattu, dated 09.05.2019 and came to a conclusion that there is imminent possibility of the detenu coming out on bail.

7. We carefully went through the order passed in C.M.P.No.2369 of 2019. That was the case where the accused therein had suffered incarceration for nearly 89 days and investigation was almost completed. Considering the same, the accused therein were enlarged on bail. This order relied upon by the disciplinary authority cannot be considered to be a similar case and hence, the detention order suffers from non-application of mind.

8. Before concluding, we also remind ourselves that preventive detention is not a punishment and HCP is a high prerogative writ.

Apropos, the sequitur is, captioned HCP is allowed. Impugned detention order dated 24.07.2022 bearing reference CPT No.38/2022 made by the second respondent is set aside and the detenu Thiru.Kattimuthu, aged



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22 years, son of Thiru.Kamaraj is directed to be set at liberty forthwith, if not required in connection with any other case / cases.

[M.S., J.] [N.A.V., J.]
23.03.2023

Index : Yes/No
Speaking Order/Non-speaking order
Neutral Citation : Yes/No
gm

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

To

- 1.The Home Secretary to the Government of Tamil Nadu,
Home Prohibition and Excise Department,
Fort St. George,
Chennai - 600 009.
- 2.The District Collector and District Magistrate,
Collectorate,
Chengalpattu District,
Chengalpattu – 603 001.
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5.The Superintendent of Prison,
Central Prison,
Puzhal.

6.The Public Prosecutor
High Court, Madras.



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and
N.ANAND VENKATESH, J.

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