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H.C.P.No.1860 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.03.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

H.C.P.No.1860 of 2022

Vijaya
W/o.Babu

.. Petitioner

Vs.

1. The Secretary to Government
Home, Prohibition & Excise Department
Secretariat
Fort St.George, Chennai-600 009.
2. The Commissioner of Police
Greater Chennai
Vepery, Chennai.
3. The Additional Superintendent
Central Prison-II
Puzhal, Chennai.
4. The Inspector of Police cum
Sponsoring Authority
J3 Guindy Police Station
Chennai.

.. 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 produce the body of the petitioner's son namely, Tamilarasan @ Vicky @ Nondi Vicky, son of Babu, aged about 27 years, who is detained in 3rd respondent / The Additional Superintendent, Central Prison-II, Puzhal, Chennai before this Hon'ble Court and set him at liberty forthwith by calling for the records pursuant to the detention order dated 03.08.2022 made in Memo No.234/BCDFGISSSV/2022, on the file of the 2nd respondent herein and quash the same.

For Petitioner	:	Mr.S.Senthilvel representing Mr.J.William Shakespheare
For Respondents	:	Mr.R.Muniyapparaj Additional Public Prosecutor assisted by Mr.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 mother of detenu assailing a 'preventive detention order dated 03.08.2022 bearing reference No.BCDFGISSSV No.234/2022' [hereinafter 'impugned detention order' for the sake of convenience and brevity]. To be

Page Nos.2/8



H.C.P.No.1860 of 2022

noted, fourth respondent is the sponsoring authority and 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 'Drug Offender' within the meaning of Section 2(e) of Act 14 of 1982.

3. There are four adverse cases and one ground case. The ground case which is the sole substratum of the impugned detention order is Crime No.450 of 2022 on the file of J-3 Guindy Police Station for the alleged offences under Sections 8(c) read with 20(b)(ii)(B) of 'the Narcotic and Drugs and Psychotropic Substances Act, 1985' [hereinafter 'NDPS Act' for the sake of convenience and clarity].



H.C.P.No.1860 of 2022

WEB COPY

4. Mr.S.Senthilvel, learned counsel representing the 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 learned counsel for the petitioner submitted that the detenu had four adverse cases and one ground case. Insofar as one adverse case is concerned in Crime No.768 of 2021, the detenu continues to be in remand. The detenu was also in remand in ground case in Crime No.450 of 2022. The Detaining Authority was aware of the fact that the bail application that was filed by the detenu was dismissed insofar as the adverse case is concerned and in the ground case, the same was pending. In spite of the same, the Detaining Authority came to the conclusion that there is imminent possibility of the detenu coming out on bail by relying upon the order dated 27.04.2021 passed in CrI.MP.No.1163 of 2021 by the learned Principal Sessions Judge, Special Court under EC & NDPS Act, Chennai. The learned counsel submitted that the said order was relied upon only insofar



H.C.P.No.1860 of 2022

as the ground case is concerned and there was no material before the Detaining Authority to come to the conclusion as to how there is likelihood of the detenu coming out on bail in the adverse case in Crime No.768 of 2021. Hence, the learned counsel for the petitioner submitted that the impugned detention order suffers from non-application of mind.

6. The detenu was in remand in one adverse case namely, in Crime No.768 of 2021 and in the ground case in Crime No.450 of 2022. The bail application that was filed in adverse case was dismissed on 27.07.2022. Insofar as the ground case is concerned, the bail application that was filed in CrI.MP.No.3529 of 2022 was pending. While so, the Detaining Authority has come to the conclusion that there is imminent possibility of the detenu coming out on bail by placing reliance upon the order dated 27.04.2021 passed in CrI.MP.No.1163 of 2021 by the learned Principal Sessions Judge, Principal Special Court under EC & NDPS Act, Chennai. The order that was relied upon by the Detaining authority pertains to ground case in Crime No.450 of 2022. However, insofar as the adverse case in Crime No.768 of 2021 is concerned, there was absolutely no material before the Detaining



H.C.P.No.1860 of 2022

Authority to arrive at a conclusion that there is imminent possibility of the detenu coming out on bail in the adverse case. In view of the same, the impugned detention order suffers from non-application of mind.

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

8. Apropos, the sequitur is, captioned HCP is allowed. Impugned detention order dated 03.08.2022 bearing reference No.BCDFGISSSV No.234/2022 made by the second respondent is set aside and the detenu Thiru.Tamilarasan @ Vicky @ Nondi Vicky, aged 27 years, son of Babu, 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.)

21.03.2023

Index : Yes / No

Speaking / Non-speaking

Neutral Citation : Yes / No

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

Page Nos.6/8



H.C.P.No.1860 of 2022

WEB COPY

To

1. The Secretary to Government
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Fort St.George, Chennai-600 009.
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Vepery, Chennai.
3. The Additional Superintendent
Central Prison-II
Puzhal, Chennai.
4. The Inspector of Police cum
Sponsoring Authority
J3 Guindy Police Station
Chennai.
5. The Public Prosecutor
High Court, Madras.



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

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H.C.P.No.1860 of 2022

21.03.2023

Page Nos.8/8