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H.C.P.No.1848 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.1848 of 2022

S.Revathi
W/o.Siddeshwaran

.. Petitioner

Vs.

- 1.The Secretary to Government,
Home Department,
Secretariat, Chennai - 9.
- 2.The Commissioner of Police,
Salem District.
- 3.The Superintendent of Prison,
Central Prison, Salem - 636 007.
- 4.The Inspector of Police,
Karuppur Police Station,
Salem 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 leading to the detention of the petitioner's husband Siddeshwaran S/o.Boopathi,



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Male, aged about 40 years, is presently lodged in Central Prison, Salem and has been detained under Act 14/82 as a Goonda vide detention order dated 26.08.2022 on the file of the second respondent herein, made in C.M.P.No.93/GOONDA/SALEM CITY/2022 dated 26.08.2022, quash the same and consequently, direct the respondents herein to produce the body and person of the said detenu before this Court and thereafter, set him at liberty from the Central Prison, Salem.

For Petitioner : Mr.E.C.Ramesh
For Respondents : Mr.R.Muniyapparaj
Additional Public Prosecutor
assisted by
M. Sylvester John, Advocate

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 wife of detenu assailing a 'preventive detention order dated 26.08.2022 bearing reference C.M.P.No.93/Goonda/Salem 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 the impugned detention order has been made by second respondent.

2. Impugned detention order has been made under 'The Tamil Nadu



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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 are two adverse cases. The ground case which constitutes a sizable chunk of the substratum of the impugned detention order is Crime No.280 of 2022 on the file of Karuppur Police Station for alleged offences under Sections 341, 392 r/w 397 and 506(ii) of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity].

4. Mr.E.C.Ramesh, 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. Notwithstanding very many averments and grounds in the support



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affidavit, Mr.E.C.Ramesh, learned counsel for petitioner predicated his campaign against the impugned preventive detention order on one point in the hearing and that one point turns on subjective satisfaction of the detaining authority *qua* imminent possibility of detenu being enlarged on bail. Adverting to paragraph 4 of the impugned detention order, it was submitted that the case that has been relied by the detaining authority by saying that it is a similar case to arrive at such subjective satisfaction is really dissimilar.

6. We carefully looked at the order dated 02.02.2019 in C.M.P.No.346/2019 on the file of Principal Sessions Judge, Salem, *vide* Crime No.693 of 2018 for alleged offences u/s.392, 397 and 506(ii) IPC. We find from the bail order that it is a case where there was no previous case whereas in the case on hand two adverse cases even according to the impugned detention order. The accused therein had a blemishless record and this has weighed with the Sessions Court in exercising its discretion to grant bail as is evident from the contents of the bail order. Therefore, the comparison made by the disciplinary authority tantamounts to comparing



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Apples and Oranges or to put it differently comparing chalk and cheese.

Therefore, we have no difficulty in accepting the argument that the subjective satisfaction arrived at by detaining authority *qua* imminent possibility of detenu being enlarged on bail is impaired. The result is, the impugned order deserves to be dislodged.

7. 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 26.08.2022 bearing reference C.M.P.No.93/Goonda/Salem City/2022 made by the second respondent is set aside and the detenu Thiru.Siddeshwaran, aged 40 years, son of Thiru.Boopathi 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

M.SUNDAR, J.
and



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N.ANAND VENKATESH, J.

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gm

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, Salem.

To

- 1.The Secretary to Government,
Home Department,
Secretariat, Chennai - 9.
- 2.The Commissioner of Police,
Salem District.
- 3.The Superintendent of Prison,
Central Prison, Salem - 636 007.
- 4.The Inspector of Police,
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- 5.The Public Prosecutor
High Court, Madras.

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