



H.C.P.No.1901 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.1901 of 2022

N.Alamelu
D/o.Nagaraj

.. Petitioner

Vs.

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

2.The Commissioner of Police,
Greater Chennai,
Veppery, Chennai.

3.The Superintendent,
Special Prison for Women,
Puzhal, Chennai.

4.The Inspector of Police,
P-5, M.K.B Nagar Police Station,
Chennai.

.. 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 connection with the order of detention passed by the second respondent dated

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03.08.2022 in No.236/BCDFGISSSV/2022 against the petitioner's mother Rama @ Aruppu Rama, female aged 49 years, w/o.Nagaraj, who is confined at Special Prison for Women, Puzhal, Chennai and set aside the same and direct the respondents to produce the detenu before the Hon'ble Court and set him at liberty.

For Petitioner : Mr.A.Venkateswara Babu

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 daughter of the detenu assailing a 'preventive detention order dated 03.08.2022 bearing reference No.236/BCDFGISSSV/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 the second respondent.



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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 three adverse cases and one ground case. The ground case which is the sole substratum of the impugned detention order is Crime No.469 of 2022 on the file of P-5 M.K.B. Nagar Police Station for alleged offences under Sections 8(c) r/w 20(b)(ii)(B) of 'Narcotic Drugs and Psychotropic Substances Act, 1985' [hereinafter 'NDPS Act' for the sake of convenience and clarity].

4. Mr.A.Venkateswara Babu, 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.



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5. The main ground that was urged by learned counsel for petitioner is that the detaining authority was aware of the fact that the bail application that was filed by the detenu in Crl.M.P.No.3279 of 2022 was dismissed by order dated 22.07.2022 and there was no bail application pending as on the date of passing the detention order. In spite of the same, the disciplinary authority came to a conclusion that there is imminent possibility of detenu being enlarged on bail without there being any material to support the subjective satisfaction of the disciplinary authority.

6. The Apex Court in ***Rekha*** case [***Rekha Vs. State of Tamil Nadu through Secretary to Government and another*** reported in (2011) 5 SCC 244] has categorically held that the Detaining Authority cannot merely state that in a similar case bail is granted by the Courts, without there being any other material and if such orders are passed, the detention order will suffer from non-application of mind. The facts of the present case is squarely covered by judgment of ***Rekha*** case referred to supra. For proper appreciation, paragraph No.27 of ***Rekha*** case is extracted hereunder:

'27. In our opinion, there is a real possibility of release of a



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person on bail who is already in custody provided he has moved a bail application which is pending. It follows logically that if no bail application is pending, then there is no likelihood of the person in custody being released on bail, and hence the detention order will be illegal. However, there can be an exception to this rule, that is, where a co-accused whose case stands on the same footing had been granted bail. In such cases, the detaining authority can reasonably conclude that there is likelihood of the detenu being released on bail even though no bail application of his is pending, since most courts normally grant bail on this ground. However, details of such alleged similar cases must be given, otherwise the bald statement of the authority cannot be believed.'

7. In view of the same, the impugned detention order is liable to be interfered with by this Court.

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 03.08.2022 bearing reference 236/BCDFGISSSV/2022 made by the second respondent is set aside and



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the detenu Tmt.Rama @ Aruppu Rama, aged 49 years, wife of Thiru.Nagaraj, 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 / Non-speaking
Neutral Citation : Yes / No
gm

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

To

- 1.The Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George, Chennai - 600 009.
- 2.The Commissioner of Police,
Greater Chennai,
Veppery, Chennai.
- 3.The Superintendent,
Special Prison for Women,
Puzhal, Chennai.
- 4.The Inspector of Police,
P-5, M.K.B Nagar Police Station,
Chennai.
- 5.The Public Prosecutor, High Court, Madras.

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