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H.C.P.No.1865 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.04.2023

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

H.C.P.No.1865 of 2022

Uma Maheswari

.. Petitioner

Vs

1.The Principal Secretary to Government,
Home, Prohibition and Excise Department,
Chennai – 9.

2.The Commissioner of Police,
Avadi City, Chennai.

3.The Superintendent of Prison,
Central Prison, Puzhal, Chennai.

4.The State rep. By Inspector of Police,
M-7 Manali New Town Police Station,
Chennai.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus to direct the respondents to call for the records vide order No.74/BCDFGISSSV/2022 dated 09.07.2022 on the file of the second respondent and set aside the same and to produce the petitioner's son-in-law Ganesan @ Ganesh, male, aged 29, S/o.Kirubanandam,

Page Nos.1/8



H.C.P.No.1865 of 2022

now confined at Central Prison II, Puzhal, Chennai and set him at liberty forthwith.

For Petitioner : Mr.V.Parthiban
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 mother-in-law of the detenu assailing a 'preventive detention order dated 09.07.2022 bearing reference No.74/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 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



H.C.P.No.1865 of 2022

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 three adverse cases. The ground case which is the sole substratum of the impugned detention order is Crime No.206 of 2022 on the file of M-7 Manali New Town Police Station for alleged offences under Sections 341, 294(b), 336, 427, 392 and 506(ii) r/w 397 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.V.Parthiban, 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. In the support affidavit qua captioned HCP, very many grounds have been raised/urged but in the hearing, Mr.V.Parthiban,



H.C.P.No.1865 of 2022

learned counsel for petitioner posited his argument on one point and that one point turns on the subjective satisfaction arrived at by the detaining authority qua imminent possibility of detenu being enlarged on bail. In this regard, two portions of the impugned preventive detention order contained in paragraphs 3 and 4 are relevant and those portions are as follows:

'3.....Based on the complaint from Thiru.Arun in this regard, the Inspector of Police has registered a case in M-7 Manali New Town Police Station Crime No.206/2022 u/s 341, 294(b), 336, 427, 392, 506(ii) IPC r/w 397 IPC and taken up for investigation....'

'4.....In a similar case registered at under section 294(b), 341, 323, 397, 336, 427 and 506(ii) IPC, in J-4 Kotturpuram Police Station Crime No.43/2018, the bail was granted by the Court of Principal Sessions Judge at Chennai in Crl.M.P.No.1759/2018. Hence, I infer that it is very likely of his coming out on bail in M-7 Manali New Town Police Station Crime No.206/2022 and there is a real possibility of his coming out on bail in M-7 Manali New Town Police Station Crime No.202/2022 case by filing bail application before the appropriate court, since in a similar case, the bail was granted by the court after a lapse of time...'



H.C.P.No.1865 of 2022

WEB COPY

6. In the aforementioned extract, first extract refers to ground case and the second extract refers to what according to the detaining authority is a similar case. To be noted, what according to the detaining authority is similar case is one where one Aravind is the petitioner and therefore same shall be referred to as *Aravind's case*. The bail order in *Aravind's case* being an order dated 01.02.2018 in Crl.M.P.No.1759 of 2018 on the file of Principal Sessions Court, Chennai, has been annexed to the grounds booklet at pages 194 and 195. We have perused the same and we find that *Aravind's case* does not serve as a bench mark for two reasons and they are as follows:

(i) In *Aravind's case*, the offence of robbery punishable under Section 392 IPC is not there. This makes a world of difference owing to the facts and circumstances of the case on hand;

(ii) In *Aravind's case*, paragraph 5 of the bail order makes it clear that the petitioner is involved in two cases and he is on bail in other cases pending against him. This appears to have weighed with the learned Sessions Judge in gravitating towards exercising discretion in favour of grant of bail .

7. Owing to the aforementioned two striking differences,



H.C.P.No.1865 of 2022

comparison of *Aravind's* case with the ground case for arriving at subjective satisfaction qua imminent possibility of detenu being enlarged on bail is clearly a flawed exercise, it is a case of comparing apples and oranges. Therefore, we have no hesitation in saying that the impugned preventive detention order deserves to be dislodged.

8. Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 09.07.2022 bearing reference No.74/BCDFGISSSV/2022 made by the second respondent is set aside and the detenu Thiru.Ganesan @ Ganesh, aged 29 years, son of Thiru.Kirubanandam, 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.) (M.N.K.,J.)
25.04.2023

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, Puzhal, Chennai.

To

Page Nos.6/8



H.C.P.No.1865 of 2022

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Chennai – 9.

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5.The Public Prosecutor
High Court, Madras.



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H.C.P.No.1865 of 2022

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

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H.C.P.No.1865 of 2022

25.04.2023

Page Nos.8/8