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H.C.P.No.1897 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.1897 of 2022

Abilashwari
W/o.Magesh

.. Petitioner/Wife of Detenu

Vs.

1. The Commissioner of Police,
Office of the Commissioner of Police,
Greater Chennai.
2. The Additional Chief Secretary,
Government of Tamil Nadu,
Home, Prohibition and Excise Department,
Secretariat,
Chennai-600 009.
3. The Superintendent,
Central Prison,
Puzhal, Chennai – 600 066.
4. The Inspector of Police (L & O),
R-6, Kumaran Nagar 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 call for the records pertaining to the order of detention passed by the first respondent herein and made in No.231/BCDFGISSSV/2022 dated 02.08.2022, and to set aside the same and directing the third respondent to produce the detenu, the husband of the petitioner herein Thiru.Magesh, aged 27 years, S/o.Kannan, now confined in Central Prison, Puzhal, Chennai before this Court and thereby setting him at liberty.

For Petitioner : Mr.Ganesh Rajan
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 wife of detenu assailing a 'preventive detention order dated 02.08.2022 bearing reference BCDFGISSSV No.231/2022' [hereinafter 'impugned detention order' for the sake of convenience and brevity]. To be noted, fourth respondent is the sponsoring authority and first respondent is the detaining authority as the impugned detention order has been made by first 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 'Goonda' within the meaning of Section 2(f) of Act 14 of 1982.

3. There are five adverse cases and one ground case. The ground case which is the substratum of the impugned detention order is Crime No.226 of 2022 on the file of R-6 Kumaran Nagar Police Station for the alleged offences under Sections 294(b), 323, 392, 397, 427, 336 and 506(ii) 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.



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4. Mr.Ganesh Rajan, 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 projected before this Court was that the detenu had five adverse cases and one ground case against him . Out of the five adverse cases, the detenu continued to be in remand in Crime No.225 of 2022. That apart, he was also on remand in the ground case in Crime No.226 of 2022. The Detaining Authority was aware of the fact that bail applications that were moved in the adverse case and ground case were pending. In spite of the same, the Detaining Authority came to the conclusion that there is likelihood of the detenu being let out on bail by relying upon an order passed in CrI.M.P.No.19198 of 2021 by the learned Principal Sessions Judge, Chennai dated 27.10.2021.

6. The learned counsel for the petitioner submitted that the order that was relied upon by the Detaining Authority does not pertain to a similar



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case and the same order was relied upon for both adverse case and also ground case and hence, the impugned detention order suffers from non-application of mind.

7. The Detaining Authority was aware of the fact that the detenu was in remand in one adverse case in Crime No.225 of 2022. That apart, he was also on remand in the ground case in Crime No.226 of 2022. The bail applications filed in these two cases were pending. However, the Detaining Authority by relying upon the order dated 27.10.2021 passed in CrI.M.P.No.19198 of 2021 came to the conclusion that there is imminent possibility of detenu being let out on bail.

8. In the considered view of this Court, the Detaining Authority had relied upon the same order in CrI.M.P.No.19198 of 2021 and came to the conclusion that there is likelihood of the detenu being let out on bail in both the adverse case as well as in the ground case. This is the first flaw in the impugned detention order.



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of 2021 it is seen that there was only one previous case against the accused therein and the concerned Court had also recorded the fact that the injured had been discharged from the hospital. It is on this reasoning the bail was granted in the concerned case. In the instant case, there were five adverse cases and one ground case against the detenu. Hence, the order that was relied upon by the Detaining Authority cannot be considered to be a similar case. This is the second major flaw in the detention order, which is the subject matter of challenge in this HCP.

10. In view of the same, we are coming to the conclusion that the impugned detention order suffers from non-application of mind and hence, it is liable to be set aside.

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



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12. Apropos, the sequitur is, captioned HCP is allowed. Impugned detention order dated 02.08.2022 bearing reference BCDFGISSSV No.231/2022 made by the first respondent is set aside and the detenu Thiru.Magesh, aged 27 years, son of Thiru.Kannan, now detained in Central Prison, Puzhal, Chennai 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
rsi

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



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

rsi

To

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Office of the Commissioner of Police,
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High Court, Madras.

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