



WEB COPY



H.C.P.No.1943 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.02.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

and

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

H.C.P.No.1943 of 2022

Alice Jesintha

W/o.Durai Tamilarasu

.. Petitioner

Vs.

1. The Principal Secretary to the Government
Home Prohibition and Excise Dept.,
Secretariat, Chennai-600 009.
2. The Commissioner of Police
Tambaram City.
3. The Superintendent of Prison
Central Prison
Puzhal, Chennai-66.
4. The Inspector of Police, L & O
T-6, Peerankaranai 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 15.08.2022 in

Page Nos.1/8



H.C.P.No.1943 of 2022

Memo No.125/BCDFGISSSV/2022 against the petitioner's husband Durai Tamilarasu, Male aged 33 years, S/o.Duraisamy, who is confined at Central Prison, Puzhal II, 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.S.Senthilvel
For Respondents : Mr.R.Muniyapparaj
Additional Public Prosecutor

ORDER

[Order of the Court was made by M.SUNDAR, J.,]

Captioned 'Habeas Corpus Petition' [hereinafter 'HCP' for the sake of brevity and convenience] has been filed by the spouse of detenu in this Court on 23.09.2022 assailing a 'detention order dated 15.08.2022 bearing reference BCDFGISSSV No.125/2022' [hereinafter 'impugned detention order' for the sake of convenience and clarity] made by the 'second respondent i.e., jurisdictional Commissioner of Police' [hereinafter 'Detaining Authority' for the sake of convenience and clarity]. To be noted, fourth respondent i.e., jurisdictional Inspector of Police is the Sponsoring Authority.

2. Mr.S.Senthilvel, learned counsel on record for petitioner and Mr.R.Muniyapparaj, learned Additional Public Prosecutor for all the four



H.C.P.No.1943 of 2022

respondents are before us. To be noted, learned Additional Public

Prosecutor is instructed by fourth respondent.

3. The impugned detention order has been made by the Detaining Authority *inter alia* on the premise that the detenu is a 'Goonda' within the meaning of Section 2(f) of '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].

4. Notwithstanding very many points urged before us by learned counsel for petitioner, two points find favour with us and both turn on imminent possibility of the detenu being enlarged on bail. To be noted, there are seven adverse cases and one ground case according to the impugned detention order. As regards the imminent possibility of the detenu being enlarged on bail point is concerned paragraph No.4 of the impugned



H.C.P.No.1943 of 2022

detention order contains the articulation in this regard and the same reads as follows:

'4. I am also aware that Thiru Durai Tamilarasu who was remanded in T-6, Peerkankaranai P.S. Cr.Nos.315/2022, 316/2022, 317/2022, 318/2022, 319/2022 and 320/2022 has filed a bail petition before the Principal District and Sessions Judge at Chengalpattu in T-6, Peerkankaranai P.S. Cr.No.318/2022 vide Crl.M.P.No.3337/2022 and the same is pending. He has also filed bail petitions in T-6, Peerkankaranai P.S. Cr.Nos.315/2022, 316/2022, 317/2022, 319/2022 and 320/2022 before the Judicial Magistrate No.I, Tambaram vide Crl.M.P.Nos.5657/2022, 5658/2022, 5659/2022, 5660/2022, 5661/2022 respectively and all the petitions were pending. However, the Sponsoring Authority has stated that it is learnt that Thiru.Durai Tamilarasu's relatives are taking steps to take him out on bail in the above cases by filing a bail application is appropriate Court. Further, it is pertinent to note that in a similar case, registered at S-12, Chitlapakkam P.S. Cr.No.405/2021 u/s.406, 420 IPC bail was granted to the accused Jalaludeen Khan by the Judicial Magistrate Court No.1 Tambaram in Crl.M.P.No.1418/2022 on 30.03.2022. Hence, I infer that it is very likely of his coming out on bail in T-6 Peerkankaranai Police Station Cr.No.320/2022 since in the similarly placed cases, bails were granted by the Courts after a lapse of time. If he comes out on bail, he will further indulge in such activities which will be



H.C.P.No.1943 of 2022

prejudicial to the maintenance of public order.'

WEB COPY

5. First point is, the Detaining Authority has taken into account bail applications moved by the detenu in one ground case and five adverse cases but has considered possibility of bail in ground case alone. Learned Additional Public Prosecutor in response submitted that as regards adverse cases, the detenu has been enlarged on bail but on further perusal of records, we find that the detenu has been enlarged on bail after the impugned detention order besides this we find from aforementioned paragraph of impugned detention order that Detaining Authority has considered ground case as well as adverse cases qua imminent possibility. The sequitur is, first point becomes a damp squib. Therefore, we need to necessarily test the imminent possibility of being enlarged on bail on the basis of ground case as well as five adverse cases and this is the second point. On this second point as regards six bail applications, subjective satisfaction of the Detaining Authority is based on detenu's relatives said to be taking steps to take him out on bail by filing these bail applications.

6. Learned counsel for the petitioner exhorted that with regard to this



H.C.P.No.1943 of 2022

aspect of the impugned detention order no statements from relatives under

Section 161 of 'The Code of Criminal Procedure, 1973 (2 of 1974)'

[hereinafter 'Cr.PC' for the sake of convenience and clarity] have been taken

and no Section 161 Cr.PC statements have been furnished as part of grounds

of detention in the booklet served on the detenu. In response to this, learned

Additional Public Prosecutor drew our attention to a special report (தனி

அறிக்கை) of the booklet. A careful perusal of the booklet shows that it is a

report given by fourth respondent i.e., Inspector of Police (Investigating

Officer). Therefore, this cannot be a substitute to Section 161 Cr.PC

statement/s. Before proceeding further, we make it clear that this aspect of

the matter has to be examined on a case to case basis. In the case on hand,

there is reference to as many as six bail applications (five adverse cases and

one ground case). Therefore, we are of the view that the special report

cannot be a substitute to Section 161 Cr.PC statement/s or in other words,

the sequitur is subjective satisfaction of the Detaining Authority with regard

to imminent possibility of being enlarged on bail is hit by the vice of non

application of mind and relying on extraneous material which are clearly

infraction qua impugned detention order.



H.C.P.No.1943 of 2022

WEB COPY

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

8. Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 15.08.2022 bearing reference BCDFGISSSV No.125/2022 made by the second respondent is set aside and the detenu Thiru.Durai Tamilarasu, son of Thiru.Duraisamy is directed to be set at liberty forthwith, if not required in connection with any other case / cases.

9. Captioned HCP ordered on the above terms. There shall be no order as to costs.

(M.S.,J.)

(M.N.K.,J.)

13.02.2023

Index : Yes / No

Speaking / Non-speaking

Neutral Citation : Yes / No

mk

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

M.SUNDAR, J.,

and

M.NIRMAL KUMAR, J.,

Page Nos.7/8



H.C.P.No.1943 of 2022

mk

WEB COPY To

1. The Principal Secretary to the Government
Home Prohibition and Excise Dept.,
Secretariat, Chennai-600 009.
2. The Commissioner of Police
Tambaram City.
3. The Superintendent of Prison
Central Prison
Puzhal, Chennai-66.
4. The Inspector of Police, L & O
T-6, Peerkankaranai Police Station
Chennai.
5. The Public Prosecutor
High Court, Madras.

H.C.P.No.1943 of 2022

13.02.2023