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H.C.P.No.1973 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.04.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE DR.JUSTICE D.NAGARJUN

H.C.P.No.1973 of 2022

Renuka Devi
W/o.Baskaran

.. Petitioner

Vs.

1. The State
represented by the Secretary to the Government
Home, Prohibition and Excise Department
Government of Tamil Nadu
Fort St.George, Chennai-600 009.
2. The District Collector and District Magistrate
Vellore District, Vellore.
3. The Superintendent of Police
Vellore District, Vellore.
4. The Superintendent of Prison
Central Prison, Vellore.
5. The Inspector of Police
District Crime Branch Police Station
Vellore District.

..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 of the 2nd respondent in connection with order made in proceedings C3/D.O.No.83 dated 17.08.2022 passed against the petitioner's husband S.Baskaran @ Aavin Baskar, age 46 years son of Late Subramani, who is now confined at Central Prison, Vellore and quash the same and direct the respondents to produce the detenu before this Hon'ble Court and set him at liberty.

For Petitioner	:	Mr.S.Senthilvel
For Respondents	:	Mr.R.Muniyapparaj Additional Public Prosecutor assisted by Mr.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 the detenu assailing a 'preventive detention order dated 17.08.2022 bearing reference C3/D.O.No.83/2022' [hereinafter 'impugned detention order' for the sake of convenience and brevity]. To be noted, fifth respondent is the sponsoring authority and second respondent is the detaining authority as the impugned detention order has been made by 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 'Goonda' within the meaning of Section 2(f) of Act 14 of 1982.

3. There is no adverse case. This solitary case which is the sole substratum of the impugned detention order is Crime No.5 of 2022 on the file of District Crime Branch Police Station for alleged offences under Sections 465, 466, 468, 471 and 420 of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] and Section 91 of Rights of Person with Disability Act 2016. 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.S.Senthilvel, 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. Though very many grounds have been raised / urged in the support affidavit qua captioned HCP, Mr.S.Senthilvel, learned counsel on record for petitioner predicated his campaign against the impugned detention order on one point which finds favour with us and that one point turns on subjective satisfaction arrived at by the Detaining Authority as regards imminent possibility of the detenu being enlarged on bail. Elaborating on this submission, learned counsel drew our attention to paragraph No.5 of the impugned detention order and submitted that in paragraph No.5 of the impugned detention order, the Detaining Authority has noticed that the bail petition filed by the detenu in the ground case was dismissed on 22.07.2022. After noticing this, the Detaining Authority has gone on to say that he has information through reliable sources that the detenu is intending to file a bail petition but no supporting material buttressing this has been furnished to the detenu while supplying the grounds of detention is learned counsel's say.



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6. We had the benefit of perusing the grounds booklet. We find that there is no statement from any relative either under Section 161 of 'The Code of Criminal Procedure, 1973 (2 of 1974)' [hereinafter 'Cr.PC' for the sake of convenience and clarity] or any other material. There is no supporting material for aforementioned subjective satisfaction is clear as daylight.

7. Be that as it may, learned Prosecutor submitted to the contrary that the Detaining Authority has made an observation that bail has been granted in similar cases. This argument does not find favour with us as it is too generic and lacks specificity. As regards subjective satisfaction that has been arrived at by the Detaining Authority, it is imperative that the same should be supported by the material as rightly pointed out by the learned counsel for the petitioner. This dispositive reasoning leads this order to the sequitur that the impugned detention order deserves to be dislodged.

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



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9. Apropos, the sequitur is, captioned HCP is allowed and further sequitur is impugned detention order dated 17.08.2022 bearing reference C3/D.O.No.83/2022 made by the second respondent is set aside and the detenu Thiru.S.Baskaran @ Aavin Baskar, aged 46 years, son of Thiru.Late Subramani, 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.)

(D.N.R.,J.)

06.04.2023

Index : Yes

Speaking

Neutral Citation : Yes

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

To

1. The State

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Vellore District.
6. The Public Prosecutor
High Court, Madras.

M.SUNDAR, J.,
and
Dr.D.NAGARJUN, J.,

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