



WEB COPY



H.C.P.No.1970 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.1970 of 2022

Jeyanthi

W/o.Muniyan

.. Petitioner

Vs.

State represented by:-

1.State of Tamil Nadu

represented by Secretary of State,
Prohibition & Excise Department,
St.George Fort, Chennai - 600 009.

2.The Commissioner of Police,

Poonamallee High Road,
Vepery, Chennai - 600 007.

3.The Superintendent of Prison,

Central Prison, Puzhal,
Chennai - 600 066.

4.The Inspector of Police,

V-3, J.J.Nagar Police Station,
Chennai - 600 040.

.. Respondents



H.C.P.No.1970 of 2022

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus calling upon the production of the records relating to the detention order dated 26.08.2022 made in detention order Memo No.261/BCDFGISSSV/2022 passed by the second respondent herein, quash the same and direct the respondents to produce the body or person of the petitioner's son Krishnamoorthy @ Moorthy Son of Muniyan, aged about 32 years, branded as Drug Offender and now confined in Central Prison, Puzhal, Chennai, before this Court and set him at liberty forthwith.

For Petitioner : Mr.C.Mohan Raj
For Respondents : Mr.R.Muniyapparaj
Additional Public Prosecutor
assisted by
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 mother of detenu assailing a 'preventive detention order dated 26.08.2022 bearing reference 261/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 second respondent.



H.C.P.No.1970 of 2022

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 two adverse cases. The ground case which is the sole substratum of the impugned detention order is Crime No.220 of 2022 on the file of V-3 J.J.Nagar Police Station for alleged offences under Section 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]. 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.C.Mohan Raj, 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.



H.C.P.No.1970 of 2022

5. The main ground that was canvassed by learned counsel for petitioner is that the detaining authority was aware of the fact that no bail application was pending as on the date when the detention order was passed and in spite of the same, the detaining authority came to a conclusion that there is imminent possibility of the detenu coming out on bail relying upon the order passed in CrI.M.P.No.1414 of 2021 on the file of Principal Special Judge, Principal Special Court under EC & NDPS Act, Chennai. Learned counsel submitted that the order referred by the detaining authority is not a similar case and hence, the detention order suffers from non-application of mind.

6. It is seen from the detention order that there are two adverse cases and one ground case pending against the detenu. The detenu was arrested in the ground case in Crime No.220 of 2022 on 21.07.2022. The disciplinary authority was aware of the fact that no bail application was pending as on the date when the detention order was passed. In spite of the same, the detaining authority placed reliance upon the order in CrI.M.P.No.1414 of 2021 passed by the Principal Special Judge, Principal Special Court under



H.C.P.No.1970 of 2022

EC & NDPS Act, Chennai, dated 04.06.2021 and came to a conclusion that there is imminent possibility of the detenu being enlarged on bail.

7. We carefully went through the order passed in Crl.M.P.No.1414 of 2021 and it is noticed that there was no previous case against the accused therein and the concerned Court took into consideration the facts of the case and incarceration already suffered by the accused therein and thereafter, bail was granted. In the present case, there are two adverse cases against the detenu and hence, the fact that the detenu has two previous cases, makes it clear that the order that was referred by the disciplinary authority is not a similar case. Hence, the detention order suffers from non-application of mind.

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 26.08.2022 bearing reference



H.C.P.No.1970 of 2022

261/BCDFGISSSV/2022 made by the second respondent is set aside and

the detenu Thiru.Krishnamoorthy @ Moorthy, aged 32 years, son of Thiru.

Muniyan 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 Order/Non-speaking order
Neutral Citation : Yes/No
gm

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

To

- 1.The Secretary of State,
Prohibition & Excise Department,
St.George Fort, Chennai - 600 009.
- 2.The Commissioner of Police,
Poonamallee High Road,
Vepery, Chennai - 600 007.
- 3.The Superintendent of Prison,
Central Prison, Puzhal,
Chennai - 600 066.



H.C.P.No.1970 of 2022

4.The Inspector of Police,
V-3, J.J.Nagar Police Station,
Chennai - 600 040.

5.The Public Prosecutor
High Court, Madras.



WEB COPY



H.C.P.No.1970 of 2022

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

gm

H.C.P.No.1970 of 2022

23.03.2023