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H.C.P.No.1978 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.03.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

H.C.P.No.1978 of 2022

Muniyan
S/o.Kesavan

.. Petitioner /
Father of the detenu

Vs.

1. The State of Tamil Nadu
Represented by its Secretary
Home, Prohibition and Excise Department
Secretariat
St.George Fort
Chennai – 600 009
2. The District Magistrate and District Collector
The District Collectorate
Kallakurichi District
3. The Superintendent of Police
The Superintendent of Police Office
Kallakurichi District
4. The Superintendent of Prison
Central Prison
Cuddalore

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5. The Inspector of Police
Chinna Salem Police Station
Kallakurichi

.. 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 of the second respondent in Detention Order No.C2/45/2022 dated 28.08.2022, setting aside the order of detention passed therein and directing the respondent to produce the detenu by name Poovarasan @ Mayee, son of Muniyadurai @ Muniyan, aged about 27 years, before this Court, now detained in Central Jail at Cuddalore and set him at liberty.

For Petitioner	:	Mr.V.Gunasekar
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 the father of detenu assailing a 'preventive detention order dated 28.08.2022 bearing reference D.O.No.C2/45/2022' [hereinafter 'impugned detention order' for the sake of convenience and brevity]. To be noted, fifth respondent is the sponsoring authority and second respondent is

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the detaining authority as the 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 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 one adverse case. This solitary case which is the sole substratum of the impugned detention order is Crime No.241 of 2022 on the file of Chinnasalem Police Station for alleged offences under Sections 448 and 395 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.V.Gunasekar, 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. Notwithstanding very many averments and grounds raised in the support affidavit, in the hearing Mr.V.Gunasekar, learned counsel for petitioner predicated his campaign against the impugned detention order on two points and they are as follows:

a) As regards the subjective satisfaction of detaining authority qua imminent possibility of detenu being enlarged on bail qua paragraph 5 of the impugned detention order, the detaining authority has said that the detenu has filed a bail petition before Principal District and Sessions Court, Villupuram but the bail petition was dismissed.

b) As regards the same subjective satisfaction, Sponsoring Authority has relied on an order dated 14.02.2021 made in C.M.P.No.8474 of 2021 on the file of the Principal Sessions Judge, Villupuram vide Crime No.413 of 2021 for alleged offences under Sections 395 and 397 of IPC of Elavanasurkottai



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Police Station but this really is not a similar case as the ground case turns on offences under Sections 448 and 395 of IPC also;

6. In response to the aforesaid two points, learned Prosecutor submitted to the contrary and submissions of learned Prosecutor are as follows:

a) As regards subjective satisfaction, learned Prosecutor submitted that there is every likelihood of detenu coming out on bail;

b) As regards the second point, it was submitted that the two cases are largely similar;

7. We carefully considered the two points that have been urged / exhorted before us. We also considered the rival submissions. The discussion and dispositive reasoning are as follows:

a) As regards the first point, the bail petition filed by the detenu was dismissed. Therefore, this point enures to the benefit of the petitioner;

b) As regards the second point, we find that two cases are dissimilar as one of the provisions of IPC referred to by learned



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counsel for petitioner is not there in the bail order which has been treated as a similar case and this by itself makes the two cases different. This means that subjective satisfaction qua imminent possibility of detenu being enlarged on bail is impaired. The sequitur is, second point also enures to the benefit of the petitioner.

8. Apropos, the sequitur is, captioned HCP is allowed. Impugned detention order dated 28.08.2022 bearing reference D.O.No.C2/45/2022 made by the second respondent is set aside and the detenu Thiru.Poovarasana alias Mayee, aged 27 years, son of Thiru.Muniyadurai alias Muniyan, 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.)

29.03.2023

Index : Yes/No
Speaking/Non-speaking order
Neutral Citation : Yes
gpa

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

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To

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5. The Inspector of Police
Chinna Salem Police Station
Kallakurichi
6. The Public Prosecutor
Madras High Court
Chennai



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