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H.C.P.No.1975 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.1975 of 2022

Vellaiyammal
W/o.Selvam

.. Petitioner

Vs.

The State represented by its

1. The Secretary to Government (Home)
Prohibition and Excise Department
Government of Tamil Nadu
Fort St.George, Chennai-600 009.
2. The Commissioner of Police
Salem City, Salem District.
3. The Superintendent of Prison
Central Prison, Salem.
4. The Inspector of Police
Veeranam Police Station
Salem District.

..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 pertaining to the

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order of detention dated 31.08.2022 passed by the 2nd respondent in C.M.P.No.102/Drug Offender/Salem City/2022 and quash the same and produce the detenu Sathish Kumar, S/o.Selvam, aged about 31 years, before this Hon'ble Court and set him at liberty and the detenu now confined in Central Prison, Salem.

For Petitioner	:	Mr.D.Mario Johnson
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 mother of the detenu assailing a 'preventive detention order dated 31.08.2022 bearing reference C.M.P.No.102/Drug Offender/Salem City/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.



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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 'Drug Offender' within the meaning of Section 2(e) 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.269 of 2022 on the file of Veeranam Police Station for alleged offences under Sections 8(c) read with 20(b)(ii)(B) of the '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.D.Mario Johnson, learned counsel on record for petitioner and Mr.R.Muniyapparaj, learned State Additional Public Prosecutor, assisted by



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Mr.M.Sylvester John, learned counsel for all respondents are before us.

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5. Notwithstanding very many grounds urged / raised in the support affidavit in the captioned HCP in the hearing, learned counsel on record for petitioner predicated his campaign against impugned detention order on one point that finds favour with us and that one point turns on subjective satisfaction that has been arrived at by the Detaining Authority qua imminent possibility of the detenu being enlarged on bail.

6. Elaborating on the aforementioned submission, learned counsel drew our attention to paragraph No.4 of the impugned detention order and submitted that the Detaining Authority has relied on a bail order dated 15.07.2020 made in C.M.P.No.323 of 2020 as regards Crime No.212 of 2020 on the file of Court of Special Judge for EC Act Cases, Salem is a case where alleged offences are under Sections 8(c) read with 20(b)(ii)(B) of NDPS Act. Learned counsel submitted that impugned detention order refers to this as one Briyani Mani @ Manikandan order but this bail order has not been furnished to the detenu as part of grounds booklet.

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7. We had the benefit of perusing the grounds booklet. Before we proceed further, we deem it appropriate to record that learned Additional Public Prosecutor submits to the contrary. Learned Prosecutor submitted that Briyani Mani is a alias name, his name is Manikandan, that is very much available in the bail order and that bail order finds place at page Nos.42 and 43 of the grounds booklet.

8. This Bench finds that the bail order at Page Nos.42 and 43 pertain to C.M.P.No.336 of 2020 and not C.M.P.No.323 of 2020. Learned Prosecutor attempted to explain this away by saying that this is a typographical error but we are not inclined to accede to this argument as this impacts, nay impairs the detenu's rights to make an effective representation against the impugned detention order and such a right Constitutional safeguard enshrined in Clause (5) of Article 22 of Constitution of India.

9. In this view of the matter, we have no hesitation in saying that the detenu's right to make an effective representation has been impaired and therefore we are inclined to interfere with the impugned detention order.

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WEB COPY 10. Before concluding, we also remind ourselves that preventive detention is not a punishment and HCP is a high prerogative writ.

11. Apropos, the sequitur is, captioned HCP is allowed. Impugned detention order dated 31.08.2022 bearing reference C.M.P.No.102/Drug Offender/Salem City/2022 made by the second respondent is set aside and the detenu Thiru.Sathish Kumar, aged 31 years, son of Thiru.Selvam, 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.)

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Index : Yes

Speaking

Neutral Citation : Yes

mk

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

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To
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Prohibition and Excise Department
Government of Tamil Nadu
Fort St.George, Chennai-600 009.
2. The Commissioner of Police
Salem City, Salem District.
3. The Superintendent of Prison
Central Prison, Salem.
4. The Inspector of Police
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Salem District.
5. The Public Prosecutor
High Court, Madras.



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

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