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H.C.P.No.2019 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.03.2023

CORAM

THE HONOURABLE MR.JUSTICE **M.SUNDAR**
and
THE HONOURABLE MR.JUSTICE **M.NIRMAL KUMAR**

H.C.P.No.2019 of 2022

Munnudiya Selvi

.. Petitioner

Vs

1.The Addl. Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai 600009.

2.The Commissioner of Police,
Greater Chennai.

3.The Superintendent of Prison,
Central Prison, Puzhal,
Chennai 600 066.

4.The Inspector of Police,
Law and Order,
P-5 M.K.B. Nagar Police Station,
Chennai.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus calling for the records in connection with the order of detention passed by the 2nd respondent dated 13.09.2022 in Memo No.297/BCDFGISSSV/2022 against the petitioner's husband Kishore, male, aged 24 years, Son of Venkatesan,

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who is confined at Central Prison, Puzhal, Chennai, and set aside the same and direct the respondents to produce the detenu before this Court and set him at liberty forthwith.

For Petitioner : Mr.S.Senthilvel
For Respondents : Mr.R.Muniyapparaj
Additional Public Prosecutor
assisted by Mr.M.Sylvester John

ORDER

[Order of the Court was made by **M.NIRMAL KUMAR, J.,**]

Captioned 'Habeas Corpus Petition' ['HCP' for the sake of brevity] has been filed by wife of detenu assailing a 'preventive detention order' dated 13.09.2022 bearing reference Memo No.297/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 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



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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 are six adverse cases. The ground case which is the sole substratum of the impugned detention order is Crime No.612 of 2022 on the file of P5 M.K.B. Nagar Police Station for alleged offences under Sections 341, 294(b), 323, 336, 397 and 506(ii) 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.

4. Mr.S.Senthilvel, learned counsel 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.



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5. Learned counsel for petitioner submits that there is a statement recorded as though the detenu's wife viz., the petitioner is taking steps to file yet another bail application after the dismissal of the earlier one. He further submits that no such bail application has been filed and the said statement is recorded in order justify the detenu's detention under Act 14 of 1982.

6. A perusal of the booklet particularly page 231 shows that there is neither date nor signature in the statement said to have been recorded from the petitioner. Since the document relied on by the detaining authority to arrive at the subjective satisfaction that the relatives of the detenu are taking steps to enlarge the detenu on bail is unsubstantiated, it had impaired the subjective satisfaction arrived at by the detaining authority. Therefore, the impugned detention order is liable to be set aside on this ground.

7. Apropos, the sequitur is, captioned HCP is allowed. Impugned detention order dated 13.09.2022 bearing reference Memo No.297/BCDFGISSSV/2022 made by the second respondent is set

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aside and the detenu Thiru.Kishore, male, aged 24 years, son of Thiru.Venkatesan 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.)
28.03.2023

Index : Yes / No
Neutral Citation : Yes / No
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P.S: Registry to forthwith communicate this order to Jail authorities in Central Prison, Puzhal, Chennai.

To

- 1.The Addl. Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai 600009.
- 2.The Commissioner of Police,
Greater Chennai.
- 3.The Superintendent of Prison,
Central Prison, Puzhal,
Chennai 600 066.
- 4.The Inspector of Police,
Law and Order, P-5 M.K.B. Nagar Police Station,
Chennai.
- 5.The Public Prosecutor,
High Court, Madras.

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**M.SUNDAR, J.,
and
M.NIRMAL KUMAR, J.,**

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