



WEB COPY



HCP No.2003 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.02.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

and

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

H.C.P.No.2003 of 2022

Kalpanadevi
W/o.Gunavel

.. Petitioner

Vs.

1. The State rep. By
The Secretary to Government of Tamil Nadu
Home, Prohibition and Excise
Secretariat
Chennai – 600 009

2. The Commissioner of Police
Greater Chennai
Vepery, Chennai – 600 007

3. The Superintendent of Prison
Central Prison
Puzhal, Chennai

4. The Inspector of Police
EDF II, T-37
Central Crime Branch
Vepery
Chennai – 600 007

.. Respondents

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Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus directing the respondents to produce the detenu Thiru.Pon Raghu, male aged 30 years son of Gunavel, residing at 47, H-4, Nanthagopalapuram East, Mettur, Turicorin – 628 002 now confined at Central Prison, Puzhal, Chennai as per the order of the prevention detention passed by the second respondent under Act 14 of 1982 before this Court and call for the records pertaining to the detention order of the second respondent in Memo No.264/BCDFGISSSV/2022 dated 30.08.2022 and quash the same and set the detenu at liberty.

For Petitioner : Ms.R.Subadra Devi
for Mr.G.Pugazhenth

For Respondents : Mr.R.Muniyapparaj
Additional Public Prosecutor

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 mother of the detenu assailing a 'detention order dated 30.08.2022 bearing reference No.264/BCDFGISSSV/2022' [hereinafter 'impugned detention order' for the sake of brevity and convenience] made by the 'second respondent' [hereinafter 'Detaining Authority' for the sake of brevity and convenience].

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2. In and by the impugned detention order, the detenu has been detained branding him as a 'Goonda' within the meaning of Section 2(f) of '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].

3. Ms. Subadra Devi, learned counsel representing the counsel on record for petitioner and Mr. R. Muniyapparaj, learned State Additional Public Prosecutor for all the four respondents are before us.

4. Notwithstanding very many averments in the support affidavit, learned counsel predicated her campaign against the impugned detention order on two points before us and they are as follows:

i) The detenu's bail application in the ground case being CrI.M.P.No.24276 of 2022 was dismissed by the Special Metropolitan Magistrate for exclusive trial of CCB Cases



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(relating to cheating cases in Chennai) and CB CID Metro cases, Chennai in and by an order dated 29.08.2022 but the detention order says that the date of dismissal is 26.08.2022;

ii) A case which has been relied upon in the impugned detention order being Crime No.180 of 2019 under Sections 406, 420, 465, 467, 468, 471 & 506(i) of 'Indian Penal Code, 1860 (Act 45 of 1860)' ['IPC' for brevity] wherein bail was granted by Special Metropolitan Magistrate for the exclusive trial of CCB Cases (relating to cheating cases in Chennai) and CB CID Metro cases, Chennai for arriving at subjective satisfaction qua imminent possibility of being enlarged on bail but this case is really not similar to ground case as it is not one including Sections 506(i), 34 and 120B IPC offences.

5. In response to the above, learned Additional Public Prosecutor made submissions, which are as follows:

i) As regards the bail petition, the number has been correctly given and therefore, it is an inadvertent typographical error;



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ii) As regards the similar case and the ground case several

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6. We carefully considered the rival contentions.

7. As regards both the points, it is not a question of whether it is a typographical error or broadly comparable. The reason is, the Detaining Authority has arrived at subjective satisfaction that there is imminent possibility of detenu being enlarged on bail. Therefore, this is very crucial. If Detaining Authority were to arrive at the subjective satisfaction that there is imminent possibility of the detenu being enlarged on bail that should be based on material that is strong and comparable. In the case on hand, as regards the bail application of the detenu in the ground case, the date has been misread and as regards the similar case, we find that it would be a matter of comparing Apples and Oranges or to put it differently comparing chalk and cheese.

8. Therefore, the point is, subjective satisfaction of the Detaining Authority in arriving at the conclusion that there is imminent possibility of the detenu being enlarged on bail, which is one of the vital determinants qua



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impugned detention order is impaired. The sequitur is, it warrants inference

in the impugned detention order.

9. Ergo, impugned detention order dated 30.08.2022 bearing reference No.264/BCDFGISSSV/2022 made by the second respondent is set aside and detenu Mr. Pon Raghu, male, aged 30 years, son of Mr. Gunavel, who is confined at Central Prison Puzhal, Chennai is directed to be set at liberty forthwith unless required in connection with any other case/s.

Captioned HCP ordered on above terms.

(M.S.,J.)

(M.N.K.,J.)

23.02.2023

($\frac{1}{2}$)

Neutral Citation : Yes

gpa

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



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To

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Chennai – 600 009

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Vepery, Chennai – 600 007
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5. The Public Prosecutor
High Court, Madras.



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

gpa

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