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H.C.P.No.2002 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.2002 of 2022

L.Jesintha

.. Petitioner

Vs

1.State of Tamil Nadu,
Rep. by Secretary to Government,
Prohibition and Excise Department,
Government of Tamil Nadu,
Fort St. George, Chennai - 9.

2.The Commissioner of Police,
Tambaram City,
O/o the Commissioner of Police,
Solinganallur, Chennai 600119.

3.The Superintendent,
Puzhal Prison, Chennai.

4.The Inspector of Police,
T-13, Chitlapakkam Police Station,
Pallikaranai.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus calling for the records on the file of the 2nd respondent in Order No.141/BCDFGISSSV/2022 dated 15.09.2022, quash the same and direct the respondents to

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produce the person or body of the detenu Harish, aged 27 years, Son of Jawahar, set him at liberty, who is now detained in Central Prison, Puzhal, Chennai.

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

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 detenu assailing a 'preventive detention order dated 15.09.2022 bearing reference BCDFGISSSV No.141/2022' [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 'Drug Offender' within the meaning of Section 2(3) of Act 14 of 1982.

3.The ground case which is the sole substratum of the impugned detention order is Crime No.353 of 2022 on the file of T-13 Chitlapakkam Police Station for alleged offences under Sections 8(c), 20(b)(ii)(C) of Narcotic Drugs and Psychotropic Substances Act, 1985. 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.M.Jaisingh, 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. Though several grounds have been raised/urged in the support affidavit qua captioned HCP, in the hearing Mr.M.Jaisingh, learned counsel for petitioner predicated his campaign against the impugned detention order on one point and that one point turns on imminent possibility of detenu being enlarged on bail.

6. Adverting to the impugned preventive detention order, learned counsel submitted that the detaining authority has arrived at subjective satisfaction qua imminent possibility of detenu being enlarged on bail inter-alia on the ground that detenu's relatives are taking steps to take him out on bail but there is absolutely no material to buttress this. The grounds booklet also does not show any statement from any relative of the detenu. The detaining authority besides this has relied on what according to him is a similar case but it may not be necessary to embark upon this aspect of the matter as one of the determinants for the detaining authority to arrive at subjective satisfaction qua imminent possibility of detenu being enlarged on bail is clearly flawed. We also find that except the statement from the members of the raiding party there is no other statement from any other witness. We hasten to add this cannot be used by the detenu in trial and the trial Court will consider the matter



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on its own merits and in accordance with law uninfluenced and untrammelled by what we have said in this order. Be that as it may the subjective satisfaction arrived at by the detaining authority is clearly flawed. We have no difficulty in saying that the impugned detention order deserves to be dislodged.

7. Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 15.09.2022 bearing reference BCDFGISSSV No.141/2022 made by the second respondent is set aside and the detenu Thiru.Harish, male, aged 27 years, son of Thiru.Jawahar 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.

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

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