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H.C.P.No.2072 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.03.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

H.C.P.No.2072 of 2022

Kutti

.. Petitioner

Vs.

1.The Secretary to Government,
Home Prohibition and Excise Department,
Secretariat, Fort St. George,
Chennai – 600 009.

2.The Commissioner,
Greater Chennai,
Vepery, Chennai.

3.The Additional Superintendent,
Central Prison-II,
Puzhal, Chennai.

4.The Inspector of Police cum
Sponsoring Authority,
R6 Kumaran Nagar Police Station,
Chennai.

.. Respondents

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Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus to produce the body of the petitioner's son namely Saravanan @ Orbit Saravanan, aged about 26 years, who is detained in 3rd respondent/The Additional Superintendent, Central Prison-II, Puzhal, Chennai before this Court and set him at liberty forthwith by calling for the records pursuant to the detention order dated 15.06.2022 made in Memo No.157/BCDFGISSSV/2022 on the file of the second respondent herein and quash the same.

For Petitioner	:	Mr.B.Gopalakrishnan
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 father of detenu assailing a 'preventive detention order dated 15.06.2022 bearing reference No.157/BCDFGISSSV/2022' (hereinafter 'impugned detention order' for the sake of convenience). 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 'Goonda' within the meaning of Section 2(f) of Act 14 of 1982.

3.There are four adverse cases and one ground case. The ground case which is the substratum of the impugned detention order is Crime No.163/2022 on the file of R6 Kumaran Nagar Police Station for alleged offences under Sections 341, 294(b), 324, 336, 427, 392, 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 in to the factual matrix or be detained further by facts.

4.Mr.B.Gopalakrishnan, learned counsel on record for petitioner and



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Mr.R.Muniyapparaj, learned State Additional Public Prosecutor assisted by

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

5.Though several points have been urged and very many grounds have been raised in the support affidavit qua captioned HCP, Mr.B.Gopalakrishnan, learned counsel on record for petitioner, in the hearing predicated his campaign against the impugned preventive detention order on one point and that one point turns on subjective satisfaction arrived at by the detaining authority as regards imminent possibility of detenu being enlarged on bail. Adverting to the impugned preventive detention order, more particularly, paragraph 4 thereat, learned counsel pointed out that the Sponsoring authority has mentioned that it came to light that the detenu's relatives are taking steps to take him out on bail by filing another application as the earlier bail application had been dismissed. Learned counsel submits that in the grounds booklet, statement of Thiru.Ravikumar, son of Thiru.Ramachandran under Section 161(3) Cr.P.C. has been annexed but that does not bear any date. Further, the said statement does not mention the date on which it was recorded. Learned counsel also pointed out that



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there is no mention about Thiru.Ravikumar in the impugned preventive detention order.

6.In response to this argument, learned Additional Public Prosecutor submitted to the contrary that there is a Special report from the Sponsoring authority i.e., fourth respondent. In this regard, Pages 341 and 343 of the grounds books was shown to us. A careful perusal of this Special report from the Sponsoring authority in the captioned matter brings to light that this Special report also does not contain any date.

7.In this view of the matter, taking into account the facts and circumstances of the case, the nature of the ground case, adverse cases and also considering the trajectory the matter has taken, we come to the conclusion that the subjective satisfaction arrived at by the detaining authority qua imminent possibility of detenu being enlarged on bail is impaired. Before we proceed further, we make it clear that this point has to be dealt with on a case to case basis and there cannot be any straight jacket formula as regards the subjective satisfaction qua imminent possibility point



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is concerned. Therefore, as alluded supra, on the facts and circumstances of the case, the nature of the ground case, adverse cases and considering trajectory the matter has taken, we are inclined to accept this point in the case on hand. This means that we are inclined to accept the point that the subjective satisfaction is impaired and therefore, the impugned preventive detention order deserves to be dislodged.

8.Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 15.06.2022 bearing reference No.157/BCDFGISSSV/2022 made by the second respondent is set aside and the detenu Thiru.Saravanan @ Orbit Saravanan, male, aged 26 years, son of Thiru.Kutty 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.)

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Index : Yes / No

Speaking / Non-speaking

Neutral Citation : Yes / No

cse

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

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To
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- 5.The Public Prosecutor
High Court, Madras.



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

cse

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