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H.C.P.No.2082 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.04.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

H.C.P.No.2082 of 2022

Pushpa

W/o.Ganapathi

.. Petitioner

Vs.

1. The Secretary to the Government
Home Prohibition and Excise Department
Secretariat, Chennai-600 009.
 2. The District Collector and District Magistrate of Villupuram
Villupuram District
Villupuram.
 3. The Superintendent of Police
Villupuram
Villupuram District.
 4. The Superintendent
Central Prison, Cuddalore.
 5. State Rep. by
The Inspector of Police
Vellimedupettai Police Station
Villupuram District.
- .. 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 call for the records in connection with the order of detention passed by the 2nd respondent dated 19.09.2022 in Rc.No.C2/16639/2022 against the petitioner's son Mr.Loganathan, male 20 years, son of Ganapathi, who is confined at Central Prison, Cuddalore and set aside the same and consequently direct the respondents to produce the detenu before the Hon'ble Court and set him at liberty.

For Petitioner	:	Mr.A.Saranraj
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 19.09.2022 bearing reference Rc.No.C2/16639/2022' [hereinafter 'impugned detention order' for the sake of convenience and brevity]. To be noted, fifth 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 'Goonda' within the meaning of Section 2(f) 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.105 of 2022 on the file of Vellimedupettai Police Station for alleged offence under Section 379 of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] subsequently altered into Section 392 of IPC. 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.



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4. Mr.A.Saranraj, learned counsel on record 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.

5. Though several points have been urged / raised in the support affidavit qua captioned HCP, Mr.A.Saranraj, learned counsel on record for the petitioner in the hearing projected, predicated and posited his argument on one point and that one point turns on subjective satisfaction of Detaining Authority qua imminent possibility of the detenu being enlarged on bail. Adverting to paragraph No.5 of the impugned detention order, learned counsel pointed out that the Detaining Authority has relied on a bail order dated 12.04.2016 in CrI.M.P.No.1949 of 2016 on the file of Principal District and Sessions Court, Villupuram vide Crime No.82 of 2016 for alleged offences under Sections 392 and 397 of IPC on the file of Villupuram Town Police Station. The Detaining Authority has considered this as a similar case and has arrived at subjective satisfaction that there is imminent possibility of the detenu being enlarged on bail by saying that this Kottai Saravanan's case (to be noted, bail order dated 12.04.2016 in



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Crl.M.P.No.1949 of 2016 on the file of Principal District and Sessions Court, Villupuram is Kottai Saravanan's case) is similar to the ground case of the detenu but this Kottai Saravanan's case bail order 12.04.2016 has not been furnished to the detenu as part of the grounds booklet. We had the benefit of perusing the booklet. We find the submission of the learned counsel for the petitioner is correct. As this turns on record, learned Prosecutor really does not have much of a say.

6. As the subjective satisfaction arrived at by the Detaining Authority qua imminent possibility of the detenu being enlarged on bail is based on a bail order and that has not been supplied to the detenu, the rights of the detenu to make an effective representation which is a constitutional guarantee enshrined in Clause (5) of Article 22 of the Constitution of India is impaired, we have no difficulty in saying that the impugned detention order deserves to be dislodged.

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

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8. Apropos, the sequitur is, captioned HCP is allowed. Impugned detention order dated 19.09.2022 bearing reference Rc.No.C2/16639/2022 made by the second respondent is set aside and the detenu Thiru.Loganathan, aged 20 years, son of Thiru.Ganapathi, 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.)

03.04.2023

Index : Yes

Speaking

Neutral Citation : Yes

mk

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



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To
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