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H.C.P.No.2079 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.03.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

H.C.P.No.2079 of 2022

Rasiya Begam
W/o.Gouse Basha

.. Petitioner

Vs.

1. The Principal Secy. to Government
Home, Prohibition and Excise Dept.,
Secretariat
Chennai-600 009.
2. The Commissioner of Police
Tambaram City.
3. The Superintendent of Prison
Central Prison, Puzhal
Chennai-66.
4. The Inspector of Police
T-4 Sankar Nagar Police Station
Chennai.

.. Respondents



H.C.P.No.2079 of 2022

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 second respondent dated 27.07.2022 in Memo No.114/BCDFGISSSV/2022 against the petitioner's son Ahamad Basha @ Samosa Basha, male, aged 22 years, s/o.Gouse Basha, who is confined at Central Prison, Puzhal, Chennai and set aside the same and direct the respondents to produce the detenu before the Hon'ble Court and set him at liberty.

For Petitioner	:	Mr.S.Senthilvel
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 27.07.2022 bearing reference BCDFGISSSV No.114/2022' [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 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 are three adverse cases and one ground case. The ground case which constitutes a sizable chunk of the substratum of the impugned detention order is Crime No.382 of 2022 on the file of T-4 Sankar Nagar Police Station for the alleged offences under Sections 147, 148, 294(b), 324, 336, 341, 307 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.



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4. Mr.S.Senthilvel, 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 grounds have been raised and articulated in the support affidavit qua captioned HCP, in the hearing today learned counsel on record for petitioner predicated his campaign against the impugned detention order on one point and that one point turns on subjective satisfaction arrived at by the Detaining Authority as regards imminent possibility of the detenu being enlarged on bail. Adverting to paragraph No.3 of the impugned detention order, learned counsel pointed out that Crime No.382 of 2022 on the file of T-4 Sankar Nagar Police Station for alleged offences under Sections 147, 148, 294(b), 324, 336, 341, 307 and 506(ii) of IPC is the ground case. The detenu was arrested in the ground case on 28.06.2022. In paragraph No.4 of the impugned detention order, the Detaining Authority has relied on a bail order dated 05.02.2021 in CrI.M.P.No.258 of 2021 on the file of the Principal Sessions Judge's Court, Kancheepuram District at Chengalpattu for arriving at subjective



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satisfaction qua imminent possibility of detenu being enlarged on bail. In other words, this order dated 05.02.2021 which pertains to Nishanth and two others has been relied on as a similar case. This order i.e., order in what according to the Detaining Authority is similar case has been furnished to the detenu as part of the booklet containing grounds and this bail order is at Page Nos.214 and 215.

6. We have carefully perused the bail order. We find that in Nishanth and two others case, the accused did not have any prior case. A careful perusal of the order, more particularly penultimate paragraph of the order of learned Sessions Judge brings to light that this has *inter alia* weighed in the mind of learned Sessions Judge for exercise of discretion in favour of grant of bail. Learned counsel submitted that in contradistinction, in the case on hand, even according to the impugned detention order, there are as many as three adverse cases (the Detaining Authority has noticed antecedents). Therefore it is a case of comparing Apples and Oranges and / comparing Chalk and Cheese is learned counsel's say. We have no difficulty in accepting the argument of the learned counsel for the petitioner. This means

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that the impugned detention order is vitiated owing to subjective satisfaction arrived at by the Detaining Authority as regards imminent possibility of the detenu being enlarged on bail being impaired. This further means 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.

8. Apropos, the sequitur is, captioned HCP is allowed. Impugned detention order dated 27.07.2022 bearing reference BCDFGISSSV No.114/2022 made by the second respondent is set aside and the detenu Thiru.Ahamad Basha @ Samosa Basha, aged 22 years, son of Thiru.Gouse Basha, 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.)

(N.A.V.,J.)

23.03.2023

Index : Yes

Speaking

Neutral Citation : Yes

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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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4. The Inspector of Police
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5. The Public Prosecutor
High Court, Madras.



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and
N.ANAND VENKATESH, J.,

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