



H.C.P.No.2133 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.04.2023

CORAM

THE HONOURABLE MR.JUSTICE **M.SUNDAR**
and
THE HONOURABLE MR.JUSTICE **M.NIRMAL KUMAR**

H.C.P.No.2133 of 2022

Shanthi

.. Petitioner

Vs

- 1.State of Tamil Nadu represented by
its Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George, Chennai – 600 009.
- 2.The District Collector and District Magistrate,
Villupuram District, Villupuram.
- 3.The Superintendent of Police,
Villupuram District, Villupuram.
- 4.The Inspector of Police,
Auroville Police Station,
Villupuram District.
- 5.The Superintendent,
Central Prison,
Cuddalore, Cuddalore District.

.. Respondents

Petition filed under Article 226 of the Constitution of India
praying for issuance of a writ of habeas corpus to call for the records

Page Nos.1/7



H.C.P.No.2133 of 2022

made in impugned order Rc.No.C2/14667/2022 passed by the District Collector and District Magistrate, Villupuram District, second respondent herein and quash the same as illegal and direct the respondents to produce the detenu BALACHANDAR @ CHANDRU, S/O.Elumalai, aged 36 years, before this Court, now confined in Central Prison, Cuddalore, fifth respondent herein and set him at liberty.

For Petitioner : Mr.R.Sankarasubbu
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 cousin of the detenu assailing a 'preventive detention order dated 09.09.2022 bearing reference Rc.No.C2/14667/2022' [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.



H.C.P.No.2133 of 2022

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. The ground case which is the sole substratum of the impugned detention order is Crime No.176 of 2022 on the file of Auroville Police Station for alleged offence under Sections 341, 294(b), 506(ii), 120B, 302 and 109 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.

4. Mr.R.Sankarasubbu, learned counsel for petitioner and Mr.R.Muniyapparaj, learned State Additional Public Prosecutor assisted



H.C.P.No.2133 of 2022

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

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5. In the support affidavit qua captioned HCP, very many grounds have been raised/urged but in the hearing, Mr.R.Sankarasubbu, learned counsel for petitioner 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 qua imminent possibility of the detenu being enlarged on bail. In this regard, learned counsel for petitioner drew our attention to paragraph 5 of the impugned detention order. Learned counsel for petitioner submitted that the sole substratum of impugned detention order is a solitary case and that solitary case is essentially an alleged offence under Section 302 IPC but the detaining authority has compared the same with a 'bail order dated 03.05.2018 in CrI.A. (MD) No.228 of 2018' (hereinafter referred to as 'Arunbabu's case' for the sake of convenience and clarity). Learned counsel submits that *Arunbabu's* case is inter-alia for alleged offence under Section 3(2)(v) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

Page Nos.4/7



H.C.P.No.2133 of 2022

6. Learned State Additional Public Prosecutor in response to the aforesaid submission submitted to the contrary. Learned State Additional Public Prosecutor adverting to paragraph 5 of the impugned preventive detention order submitted that criminal appeal has been correctly cited i.e., CrI.A. (MD) No.228 of 2018. We are unable to persuade ourselves to accept this argument as the point is comparison of the ground case which is an alleged offence under Section 302 IPC with a bail order granted in a matter where the alleged offence is under Section 3(2)(v) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (wherein the bail plea itself is an appeal) is clearly a case of comparing apples and oranges. To put it differently, it is comparing cheese and chalk. This means that the impugned detention order is flawed and the same deserves to be dislodged.

7. Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 09.09.2022 bearing reference Rc.No.C2/14667/2022 made by the second respondent is set aside and the detenu Thiru.Balachandar @ Chandru, son of Thiru.Elumalai, aged 36 years is directed to be set at liberty forthwith, if not required in



H.C.P.No.2133 of 2022

connection with any other case / cases. There shall be no order as to costs.

(M.S.,J.) (M.N.K.,J.)
10.04.2023

Index : Yes / No
Neutral Citation : Yes / No
mmi

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

To

- 1.The Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George, Chennai – 600 009.
- 2.The District Collector and District Magistrate,
Villupuram District, Villupuram.
- 3.The Superintendent of Police,
Villupuram District, Villupuram.
- 4.The Inspector of Police,
Auroville Police Station,
Villupuram District.
- 5.The Superintendent,
Central Prison,
Cuddalore, Cuddalore District.
- 6.The Public Prosecutor
High Court, Madras.

Page Nos.6/7



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H.C.P.No.2133 of 2022

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

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H.C.P.No.2133 of 2022

10.04.2023

Page Nos.7/7