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H.C.P.No.2102 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.2102 of 2022

Arthi

.. Petitioner

Vs

- 1.The State of Tamil Nadu,
Rep. by its Secretary to Government [Home],
Prohibition and Excise Department,
Fort St.George, Chennai -9.
- 2.The District Magistrate and District Collector,
Namakkal, Namakkal District.
- 3.The Superintendent of Police,
Namakkal District.
- 4.The Superintendent of Prison,
Central Prison, Salem.
- 5.The Inspector of Police,
Ayilpatty Police Station,
Namakkal District.

.. Respondents

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

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second respondent in his proceedings C.M.P.No.2/Goonda/2022[M1] dated 11.08.2022 to quash the same and consequently direct the respondents to produce petitioner's husband [detenu] Satheeshkumar aged 34 years S/o.Kandasamy before this Court now confined in Central Prison, Salem set him liberty forthwith.

For Petitioner : Mr.P.Lakshmikanthan
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 wife of detenu assailing a 'preventive detention order dated 11.08.2022 bearing reference C.M.P.No.22/GOONDA/2022[M1]' [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 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 offenders,



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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 one adverse case. The ground case which is the sole substratum of the impugned detention order is Crime No.78/2022 on the file of Ayilpatty Police Station for alleged offences under Section 328 of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] read with Section 24(1) of Cigarette and other Tobacco Products [Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution] Act, 2003 [hereinafter 'COTPA' 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.P.Lakshmikanthan, 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 very many grounds have been urged in the support affidavit of captioned HCP, learned counsel for petitioner Mr.P.Lakshmikanthan in the hearing posited his challenge to the impugned detention order on one point and that point is the subjective satisfaction arrived at by the detaining authority qua imminent possibility of detenu being enlarged on bail.

6.We find that in paragraph 3 of the impugned detention order the detaining authority has referred to a bail petition filed by the detenu in the ground case. The bail petition filed by the detenu in the ground case was dismissed. Thereafter, the detenu has filed a bail petition in this Court [High Court] and the same is pending. This obviously cannot be a ground for arriving at subjective satisfaction that there is imminent possibility of detenu being enlarged on bail. Be that as it may, another determinant for arriving at this subjective satisfaction is, what according to the detaining authority is a similar case. To be noted, this similar case is also another case



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qua this detenu. This is Crime No.479 of 2021 for an alleged offence under 328 of IPC read with Section 24(1) of COTPA, 2003 on the file of Ayilpatty Police Station. This bail order is dated 22.12.2021 and the same has been annexed in the grounds booklet at Pages 17 and 18. We carefully perused this bail order in Crime No.479 of 2021. A careful perusal of this bail order makes it clear that one of the important determinants/parameters which weighed in the mind of the learned Sessions Judge in granting bail by exercising discretion in favour of the detenu is that there was no adverse case qua the detenu when that bail petition was moved but in the case on hand, there is clearly atleast one adverse case even according to the impugned detention order. In this view of the matter on hand, we are inclined to hold that this exercise is clearly a comparison of 'Apples and Oranges' or to put it differently it is a case of comparing 'Cheese and Chalk'. This means that the subjective satisfaction arrived at by the detaining authority regarding imminent possibility of detenu being enlarged on bail is clearly flawed/impaired. The further sequitur of this means that the impugned detention order deserves to be dislodged.



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7.Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 11.08.2022 bearing reference C.M.P.No.22/GOONDA/2022[M1] made by the second respondent is set aside and the detenu Thiru.Satheeshkumar, male, aged 34 years, son of Thiru.Kandasamy 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 / No

Neutral Citation : Yes / No

Speaking Order/Non-Speaking Order

cse

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



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To

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- 2.The District Magistrate and District Collector,
Namakkal, Namakkal District.
- 3.The Superintendent of Police,
Namakkal District.
- 4.The Superintendent of Prison,
Central Prison, Salem.
- 5.The Inspector of Police,
Ayilpatty Police Station,
Namakkal District.
- 6.The Public Prosecutor,
High Court, Madras.



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

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