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H.C.P.No.2141 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.04.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

H.C.P.No.2141 of 2022

Kothainayagi

.. Petitioner/
Mother of detenu

Vs.

1. State of Tamil Nadu
Rep. By The Secretary to Government
Prohibition and Excise Department
Fort St.George
Chennai – 600 009

2. The Commissioner of Police
Greater Avadi City
Chennai – 600 054

3. The Inspector of Police
T-1, Ambattur Police Station
Chennai – 600 053

4. The Superintendent of Prison
Central Prison, Puzhal
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 calling for the records pertaining to Memo No.126/BCDFGISSSV/2022 dated 30.09.2022 on the file of the 2nd respondent herein and set aside the same and direct the respondents herein to produce the petitioner's son Suryaprakash, son of Saravanan, aged 22 years, now confined in the Central Prison, Puzhal, Chennai before this Court and set him at liberty.

For Petitioner : Mr.C.K.M.Appaji
For Respondents : Mr.R.Muniyapparaj
Additional Public Prosecutor
Assisted by
Mr.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 detenu assailing a 'preventive detention order dated 30.09.2022 bearing reference 126/BCDFGISSSV/ 2022' [hereinafter 'impugned detention order' for the sake of convenience and brevity]. To be noted, third respondent is the sponsoring authority and second respondent is the detaining authority as 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. The solitary case which is the sole substratum of the impugned detention order is Crime No.573 of 2022 on the file of T-1 Ambattur Police Station for the alleged offences under Sections 147, 148, 341 and 302 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.C.K.M.Appaji, learned counsel on record for petitioner and Mr.R.Muniyapparaj, learned State Additional Public Prosecutor, assisted by Mr.Sylvester John, Advocate, for all respondents are before us.



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5. In the support affidavit qua captioned HCP, several points/grounds have been raised/urged. However, in the hearing, learned counsel predicated his campaign against the impugned detention order on one point and that one point turns on imminent possibility of the detenu being enlarged on bail and the subjective satisfaction arrived at by the Detaining Authority in this regard. Elaborating on this point, learned counsel advertent to Paragraph 3 of the impugned detention order submitted that the Detaining Authority has relied on an order passed by the I Additional Sessions Judge / Vacation Sessions Judge dated 26.05.2021 in CrI.M.P.No.10485 of 2021 in Crime No. 59 of 2021 on the file of R3 Ashok Nagar Police Station to arrive at subjective satisfaction in this regard. To be noted, this 26.05.2021 bail order is in the case of one Balaji and therefore this order shall be referred to as Balaji's case. Balaji's case bail order has been furnished to the detenu as part of the grounds booklet at Pages 283 to 287 (both pages inclusive). We had the benefit of perusing this Balaji's case bail order. We find that Balaji's case bail order turns largely on then obtaining Covid-19 situation. This is articulated in Paragraph 5 of the bail order of the learned Sessions Judge and the relevant portion of Paragraph 5



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reads as follows:

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'5.....Considering the duration of custody and stage of the case and existing Covid-19 situation, this Court is inclined to grant bail to the petitioners subject to condition.'

We also noticed that Balaji's case bail order is dated 26.05.2021 and it was at a time when the hearings were only on a videoconferencing platform (virtual hearings). It is further to be noted that Balaji's case was vide a virtual hearing.

6. In response to the above point, learned Prosecutor submitted to the contrary and said that the two cases are largely comparable. After perusing Balaji's case bail order we are unable to accept this submission as determinants and parameters applied therein are completely different inter alia owing to reason delineated supra. We also find that in Balaji's case, alleged offences are under Sections 147, 148, 449, 324 and 302 IPC, which are quite different from the ground case qua impugned detention order on hand as the same turns on Sections 147, 148, 341, 302 and 120B of IPC. Therefore, we have no difficulty in coming to the conclusion that the subjective satisfaction arrived at by the Detaining Authority as regards



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imminent possibility of the detenu being enlarged on bail is impaired. This means that the impugned detention order deserves to be dislodged.

7. Apropos, the sequitur is, captioned HCP is allowed. Impugned detention order dated 30.09.2022 bearing reference 126/BCDFGISSSV/2022 made by the second respondent is set aside and the detenu Thiru.Suryaprakash, aged 22 years, son of Thiru.Saravanan 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.)

05.04.2023

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.



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To

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1. The Secretary to Government
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Madras High Court, Chennai



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