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H.C.P.No.2138 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.2138 of 2022

Rajakumari

.. Petitioner/
Wife of detenu

Vs.

1. The State of Tamil Nadu
Represented by its
Secretary to Government
Home, Prohibition and Excise Department
Secretariat
Chennai – 600 009
2. The District Collector and District Magistrate
Chengalpattu District
Chengalpattu
3. The Superintendent of Police
O/o. Superintendent of Police
Chengalpattu
Chengalpattu District
4. The Superintendent of Prison
Central Prison
Puzhal, Chennai – 600 066

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5. State rep. By
The Inspector of Police
PEW Madhuranthangam Police Station
Chengalpattu 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 entire records relating to the petitioner's husband detention under Tamil Nadu Act 14 of 1982 vide detention order dated 11.10.2022 on the file of second respondent herein and made in proceedings CPT No.52 of 2022 and quash the same as illegal and consequently direct the respondents herein to produce the petitioner's husband namely Karthick, son of Argumugam, aged about 32 years before this Court and set the petitioner's husband at liberty from detention, now the petitioner's husband is detained in Cental Prison-Puzhal.

For Petitioner : Mr.V.Paarthiban
for Mr.R.Sasikumar

For Respondents : Mr.R.Muniyapparaj
Additional Public Prosecutor
Assisted by
Mr.Sylvester John
Advocate

ORDER

[Order of the Court was made by M.NIRMAL KUMAR, J.,]

Captioned 'Habeas Corpus Petition' ['HCP' for the sake of brevity] has been filed by wife of detenu assailing a 'preventive detention order dated 11.10.2022 bearing reference CPT No.52 of 2022' [hereinafter 'impugned detention order' for the sake of convenience and brevity]. To be noted, fifth

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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, 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 'Bootlegger' within the meaning of Section 2(b) of Act 14 of 1982.

3. There are two adverse cases. The ground case which is the sole substratum of the impugned detention order is Crime No.694 of 2022 on the file of Madhuranthagam Prohibition Enforcement Wing for alleged offences under Sections 4(1)(aaa) and 4(1-A) of Tamil Nadu Prohibition Act, 1937. 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.V.Paarthiban, learned counsel representing the counsel on record for petitioner and Mr.R.Muniyapparaj, learned State Additional



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Public Prosecutor, assisted by Mr.Sylvester John, Advocate, for all the respondents are before us.

5. The primary point urged by the learned counsel for petitioner in assailing the impugned detention order is, the wife of the detenu has given a statement on 11.10.2022 clearly stating that they are not intending to take steps to file a bail application before the Sessions Court.

6. Though this has been referred to in the detention order, the Detaining Authority had further *ipso facto* had stated that there have been circumstances in the past whereby Court concerned has released similar accused on bail. The Detaining Authority has further referred to the similar bail order in C.M.P.No.2698 of 2020 wherein the bail was granted taking into consideration the directions issued by this Court as well as the Apex Court owing to Covid-19 situation. That apart, the ground case in Crime No.694 of 2022 has been registered for offences under Sections 4(1)(aaa) and 4(1-A) of Tamil Nadu Prohibition Act, 1937 but in the similar case apart from the prohibition offences, offences under Rules 6 and 11 of Tamil Nadu Rectified Spirit Rules, 2000 has also been referred to and this reflects non-



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application of mind on the part of the Detaining Authority in arriving at the subjective satisfaction. On this ground, the impugned detention order is liable to be set aside.

7. Apropos, the sequitur is, captioned HCP is allowed. Impugned detention order dated 11.10.2022 bearing reference CPT No.52 of 2022 made by the second respondent is set aside and the detenu Thiru.Karthick, aged 32 years, son of Arumugam 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.)

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Index : Yes

Speaking

Neutral Citation : Yes

gpa

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
Home, Prohibition and Excise Department
Secretariat
Chennai – 600 009
2. The Chairman
Advisory Board
Singaravelar Maligai
Ground Floor
Chennai Collectorate
No.32, Rajaji Salai
Chennai - 1
3. The Commissioner of Police
Salem City
Office of the Commissioner of Police
Linemedu, Salem
4. The Superintendent of Prison
Salem Central Prison
Salem
5. The Inspector of Police
Sooramangalam Police Station
Salem City
Salem
6. The Public Prosecutor
Madras High Court, Chennai



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

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