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H.C.P.No.2298 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.04.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

and

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

H.C.P.No.2298 of 2022

G.Thilagavathi

W/o.Gothandam

.. Petitioner/mother of Detenu

Vs.

1.The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai - 600 009.

2.The Commissioner of Police,
Greater Chennai Police,
Office of the Commissioner of Police,
(Goonda Section), Vepery,
Chennai – 600 007.

3.The Superintendent,
Central Prison,
Puzhal, Chennai – 600 066.

4.The Inspector of Police,
R-1, Mambalam Police Station (L & O),
T.Nagar, Chennai – 600 017.

.. Respondents



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Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus to call for the records pertaining to the order of detention passed by the 2nd respondent in Memo No.262/BCDFGISSSV/2022 dated 26.08.2022 set aside the same, direct to produce the detenu Thiru.Mahesh @ Dabba Mahesh, Son of Mr.Gothandam, aged about 25 years and presently detained in Central Prison at Puzhal, Chennai before this Court and set him at liberty forthwith.

For Petitioner : Mr.R.Ganesh Kumar

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 detenu assailing a 'preventive detention order dated 26.08.2022 bearing reference BCDFGISSSV No.262/2022' [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.



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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 two adverse cases and one ground case. The ground case which is the substratum of the impugned detention order is Crime No.155 of 2022 on the file of R-1 Mambalam Police Station for alleged offences under Sections 341, 294(b), 324, 307, 397 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.

4. Mr.R.Ganesh Kumar, learned counsel 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.



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5. In the support affidavit many points/grounds have been raised/urged. However, in the hearing 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 detenu being enlarged on bail. For arriving at this subjective satisfaction the detaining authority has relied on what according to him is a bail order in a similar case. The detaining authority has relied on bail order in Crime No.145/2018 on the file of F-2 Egmore Police Station but even according to the impugned preventive detention order that is for alleged offences inclusive of Sections 323, 336 and 427 of IPC. Therefore comparison of two cases is clearly comparing cheese and chalk. This means that subjective satisfaction is flawed. The further sequitur is impugned preventive detention order deserves to be dislodged.

6. Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 26.08.2022 bearing reference BCDFGISSSV No.262/2022 made by the second respondent is set aside and the detenu Thiru.Mahesh @ Dabba Mahesh, aged 25 years, son of Thiru.Gothandam,



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now detained in Central Prison, Puzhal, Chennai is directed to be set at liberty forthwith unless required in connection with any other case/s. There shall be no order as to costs.

(M.S.,J.) (M.N.K.,J.)
18.04.2023

Index : Yes / No
Speaking / Non-speaking
Neutral Citation : Yes / No
rsi

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

To

- 1.The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai - 600 009.
- 2.The Commissioner of Police,
Greater Chennai Police,
Office of the Commissioner of Police,
(Goonda Section), Vepery,
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- 3.The Superintendent,
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and
M.NIRMAL KUMAR, J.

rsi

5.The Public Prosecutor
High Court, Madras.

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