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H.C.P.No.2162 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.2162 of 2022

Durgadevi

..

Petitioner/
wife of detenu

Vs.

1. State of Tamil Nadu
Represented by its Secretary to Government
Home, Prohibition & 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 District
4. The Superintendent of Prison
Central Prison, Puzhal
Chennai



H.C.P.No.2162 of 2022

WEB COPY

5. State rep. By
The Inspector of Police
PEW Madhuranthagam 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 records relating to the petitioner's husband detention under Tamil Nadu Act 14 of 1982 vide detention order dated 14.10.2022 on the file of second respondent herein and made in proceedings CPT No.60/2022 and quash the same as illegal and consequently direct the respondents herein to produce the petitioner's husband namely Parthiban, son of Arumugam, aged about 29 years before this Court and set him at liberty now the petitioner's husband is detained in Central 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.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 14.10.2022 bearing reference CPT No.60 of 2022' [hereinafter 'impugned detention order' for the sake of convenience and brevity]. To be noted, fifth

Page Nos.2/8



H.C.P.No.2162 of 2022

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 is one adverse case. The ground case which is the sole substratum of the impugned detention order is Crime No.702 of 2022 on the file of Madhuranthagam Prohibition Enforcement Wing for the alleged offences under Sections 4(1)(aaa) and 4(1-A) of Tamil Nadu Prohibition Act, 1937 read with Rules 6 and 11 of Tamil Nadu Rectified Spirit Rules, 2000. Owing to the nature of the challenge to the impugned detention order,



H.C.P.No.2162 of 2022

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

5. In the support affidavit qua captioned HCP, several points/grounds have been raised/urged but in the hearing, Mr.V.Paarthiban, learned counsel appearing on behalf of counsel on record for petitioner predicated his campaign against the impugned 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. Elaborating on this point, learned counsel drew our attention to Paragraph 5 of the impugned preventive detention order and submitted that Detaining Authority has relied on an order dated 25.08.2020 made in CrI.M.P.No.2698 of 2020 on the file of Principal District and Sessions Court, Chengalpattu



H.C.P.No.2162 of 2022

vide Crime No.1688 of 2020 on the file of Madurantakam Police Station.

To be noted, in this case, Raji, son of Murugan is the petitioner and therefore, this case shall be referred to as Raji's case. Learned counsel appearing to the bail order in Raji's case submitted that the bail order was made in view of directions of Hon'ble Supreme Court in *Suo Motu W.P. (Civil) No.1 of 2020* owing to the 'Coronavirus Pandemic and Consequent lock down' which shall be referred to as 'Covid-19 situation' which cannot be made applicable to the ground case or the adverse case qua bail as on the date of impugned detention order.

6. In response to the above argument, learned Prosecutor submitted to the contrary and said that the two orders are broadly comparable.

7. We had the benefit of perusing the bail order in Raji's case and we find that submission made by learned counsel for petitioner is acceptable. The reason is, a portion of the bail order of learned Sessions Judge in Raji's case reads as follows:

*'.....In furtherance to the directions of the Hon'ble Chief Justice at High Court, Madras vide letter dated 21.03.2020 and pursuant to directions of the Hon'ble Supreme Court in *Suo Motu W.P. (Civil) No.1 of 2020 In Re: Contagion of Covid 19 virus in prisons**



H.C.P.No.2162 of 2022

and also in view of the directions given by the High Power Committee appointed by the Hon'ble Supreme Court of India, New Delhi and also considering the urgent need and necessity to ensure social distancing and thereby reducing the scope of infection, it is essential that the prisons are decongested as much as possible.'

8. Be that as it may, there is one other facet of this point. As regards the subjective satisfaction arrived at by the Detaining Authority with regard to imminent possibility of detenu being released on bail, a careful perusal of paragraph 5 of the impugned preventive detention order shows that the Detaining Authority has recorded the obtaining position that the detenu had applied for bail and the same is pending. Though this obtaining position has been recorded, the Detaining Authority has said that the detenu is likely to get bail if 'he applies for bail'. Therefore, we have no difficulty in accepting the submission of learned counsel for petitioner that the subjective satisfaction arrived at by the Detaining Authority as regards imminent possibility of detenu being enlarged on bail is impaired. The direct impact or in other words, the consequence of this is, the impugned detention order deserves to be dislodged.



H.C.P.No.2162 of 2022

9. Ergo, the sequitur is, captioned HCP is allowed and the further sequitur is impugned detention order dated 14.10.2022 bearing reference CPT No.60 of 2022 made by the second respondent is set aside and the detenu Thiru.Parthiban, aged 29 years, son of Thiru.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.)

05.04.2023

Index : Yes / No

Speaking / Non-speaking

Neutral Citation : Yes / No

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

To

1. The 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
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Page Nos.7/8



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H.C.P.No.2162 of 2022

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

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4. The Superintendent of Prison
Central Prison, Puzhal
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Chengalpattu District
6. The Public Prosecutor
Madras High Court, Chennai

H.C.P.No.2162 of 2022

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