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H.C.P.No.2236 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.04.2023

CORAM

**THE HONOURABLE MR.JUSTICE M.SUNDAR**  
and

**THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR**

H.C.P.No.2236 of 2022

Meena  
W/o.Kabali

... Petitioner  
Mother of the detenu

Vs.

1. The State of Tamilnadu  
Rep. By its Secretary to Government  
Home, Prohibition and Excise Department  
Fort St.George  
Chennai – 600 009
  2. The Commissioner of Police  
Tambaram City  
Chennai
  3. The Superintendent of Prison  
Central Prison-II, Puzhal,  
Chennai - 66
  4. The Inspector of Police  
Chemmanchery Police Station  
Chennai
- ... Respondents  
Petition filed under Article 226 of the Constitution of India praying

Page Nos.1/8



H.C.P.No.2236 of 2022

for issuance of a writ of habeas corpus calling for the records leading to the detention of the petitioner's son Karthik @ Kozhi Karthik, son of Kabali, male aged about 22 years, the detenu herein presently lodged in Central Prison, Puzhal at Chennai who has been detained under Act 14/82 as a 'Goonda' vide detention order dated 03.10.2022 made in BCDFGISSSV No.151/2022 by the 2<sup>nd</sup> respondent herein and quash the same and consequently direct the respondents herein to produce the body and person of the said detenu before this Court and set him at liberty.

For Petitioner : Mr.D.Balaji  
for Mr.M.Rajavelu

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 the detenu assailing a 'preventive detention order dated 03.10.2022 bearing reference BCDFGISSSV No.151/2022' [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.



H.C.P.No.2236 of 2022

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 three adverse cases. The ground case which is the sole substratum of the impugned detention order is Crime No.245 of 2022 on the file of T-16, Chemmanchery Police Station for alleged offences under Sections 341, 294(b), 323, 392 read with 397, 336, 427 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.



*H.C.P.No.2236 of 2022*

4.Mr.D.Balaji, learned counsel representing the counsel on record for petitioner and Mr.R.Muniyapparaj, learned State Additional Public Prosecutor, assisted by Mr.M.Sylvester John, Advocate, for all respondents are before us.

5. Several grounds have been raised/urged in support affidavit of the captioned HCP but Mr.D.Balaji, learned counsel for petitioner predicates his campaign against the impugned preventive detention order on one point in the hearing. This one point turns on imminent possibility of detenu being enlarged on bail.

6. Taking us through the impugned preventive detention order, learned counsel pointed out that the ground case is Crime No.245 of 2022 on the file of T-16, Chemmanchery Police Station for alleged offences under Sections 341, 294(b), 323, 392 read with 397, 336, 427 and 506 (ii) of IPC but subjective satisfaction qua imminent possibility of detenu being enlarged on bail arrived at by the Detaining Authority was by placing reliance on an order dated 11.04.2018 made in CrI.M.P.No.6184 of 2018 vide Crime No.145 of 2918 on the file of Egmore Police Station. Learned counsel submits that two very important offences under Sections 392 and



H.C.P.No.2236 of 2022

397 of IPC pertaining to 'Punishment for Robbery' and 'Robbery or decoity with attempt to cause death or grievous hurt' are not therein in the similar case.

7. In response to the above submission, learned Prosecutor submitted to the contrary by saying that two cases are broadly comparable.

8. We carefully perused the bail order in the similar case (to be noted, in the similar case one Stephen @ Stephenraj is the petitioner and therefore similar case shall be referred to as 'Stephen's case'). We find that the parameters and determinants for grant of bail in Stephen's case are different as learned Sessions Judge has proceeded on the basis that custodial interrogation is over.

9. Be that as it may, we find that absence of alleged offences under Sections 392 and 397 of IPC is a very striking difference and therefore, comparison of the ground case with Stephen's case bail order tantamounts to comparing Apples and Oranges. This means that subjective satisfaction arrived at by the Detaining Authority is impaired.

10. Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 03.10.2022 bearing reference BCDFGISSSV



H.C.P.No.2236 of 2022

No.151/2022 made by the second respondent is set aside and the detenu

Thiru.Karthik @ Kozhi Karthik, aged 22 years, son of Thiru.Kabali, 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.)

17.04.2023

Index : Yes/No

Speaking/No speaking order

Neutral Citation : Yes /No

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



H.C.P.No.2236 of 2022

To

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1. The Secretary to Government  
Home, Prohibition and Excise Department  
Fort St.George  
Chennai – 600 009
2. The Commissioner of Police  
Tambaram City  
Chennai
3. The Superintendent of Prison  
Central Prison-II, Puzhal,  
Chennai - 66
4. The Inspector of Police  
Chemmanchery Police Station  
Chennai
5. The Public Prosecutor  
Madras High Court, Chennai



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*H.C.P.No.2236 of 2022*

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

gpa

H.C.P.No.2236 of 2022

17.04.2023

Page Nos.8/8