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H.C.P.No.2233 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.2233 of 2022

Priyanka
W/o.Gugan

.. Petitioner/wife of Detenu

Vs.

- 1.The State represented by
The Secretary to Government, (Home)
Prohibition and Excise Department,
Government of Tamil Nadu,
Fort St. George,
Chennai - 600 009.
- 2.The District Collector / District Magistrate,
Villupuram District,
Villupuram.
- 3.The Superintendent of Police,
Villupuram District,
Villupuram.
- 4.The Superintendent of Prison,
Central Prison, Cuddalore.
- 5.The Inspector of Police,
Villupuram Town Police Station,
Villupuram District.

.. 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 dated 22.09.2022 passed by the 2nd respondent in Rc.No.C2/17329/2022 dated 22.09.2022 and quash the same and produce the detenue Gugan, S/o.Ravi, aged about 24 years before this Court and set him at liberty and the detenu now has been confined at Central Prison, Cuddalore.

For Petitioner : Mr.D.Ashokkumar

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 wife of detenu assailing a 'preventive detention order dated 22.09.2022 bearing reference Rc.No.C2/17329/2022' [hereinafter 'impugned detention order' for the sake of convenience and brevity]. To be noted, fifth 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 is no adverse case. The ground case which is the sole substratum of the impugned detention order is Crime No.154 of 2022 on the file of Villupuram Town Police Station for an alleged offence under Section 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.D.Ashokkumar, 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 have been urged/raised.

However, learned counsel for petitioner in the hearing 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 the detenu being enlarged on bail. Learned counsel took us through paragraph 5 of the impugned preventive detention order and submitted that for arriving at such subjective satisfaction the detaining authority has relied on two determinants (to be noted 'determinants' according to detaining authority). One determinant is that the relatives of the detenu are taking steps to file bail application. On this determinant learned counsel submitted that there is no document to support this. Learned counsel points out that no statement under Section 161 Cr.P.C. of any relatives has been annexed to the grounds booklet. We find that there is nothing to support this determinant. As regards second determinant, the detaining authority has relied on bail order dated 03.05.2018 granted by a Hon'ble Single Judge of this Court in CrI.A(MD).No.228 of 2018 (to be noted, Arunbabu is the petitioner and therefore we shall refer to this case as 'Arunbabu' case). After referring to the bail order in Arunbabu's case, the detaining authority has arrived at subjective satisfaction that there is



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imminent possibility of detenu being enlarged on bail. We carefully perused Arunbabu's case. We find that Arunbabu's case is one where alleged offences qua the petitioner therein are under Sections 147, 148, 447, 294(b), 324, 302, 506(ii) and 120(B) of IPC and more importantly Section 3, 4(a) of Explosives Substances Act, 1908 read with Section 3(1)(r), 3(1)(s) of 'the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015' [hereinafter 'SC/ST (POA) Act' for the sake of convenience and clarity] and Section 3(2)(v) of SC/ST (POA) Act 1989. The SC/ST POA Act operates under different legal dynamics. The legal mechanics operating there are very different from the ground case herein which is for an alleged offence under Section 302 of IPC. We also notice that under SC/ST POA Act the bail plea becomes an appeal by itself. In the light of this vast difference we are convinced that bail order in Arunbabu's case and the ground case which is the sole substratum of the impugned preventive detention order are not comparable. This means that the subjective satisfaction arrived at by the detaining authority is clearly flawed. This further means that impugned preventive detention order deserves to be dislodged.



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6. Apropos, the sequitur is, captioned HCP is allowed. Impugned detention order dated 22.09.2022 bearing reference Rc.No.C2/17329/2022 made by the second respondent is set aside and the detenu Thiru.Gugan, aged 24 years, son of Thiru.Ravi, now detained in Central Prison, Cuddalore 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
Speaking
Neutral Citation : Yes
rsi

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



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To

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- 1.The Secretary to Government, (Home)
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- 5.The Inspector of Police,
Villupuram Town Police Station,
Villupuram District.
- 6.The Public Prosecutor
High Court, Madras.



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M.NIRMAL KUMAR, J.

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