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H.C.P.No.2238 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.04.2023

CORAM

THE HONOURABLE MR.JUSTICE **M.SUNDAR**
and
THE HONOURABLE DR.JUSTICE **D.NAGARJUN**

H.C.P.No.2238 of 2022

Gomathi

.. Petitioner

Vs

- 1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 9.
- 2.The Commissioner of Police,
Avadi City.
- 3.The Superintendent of Prison,
Central Prison, Vellore.
- 4.The Inspector of Police,
Law and Order,
T-12, Poonamallee Police Station,
Chennai.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus calling for the records in connection with the order of detention passed by the second respondent dated 14.09.2022 in Memo No.117/BCDFGISSSV/2022 against the Ebinesar @ Rajan, Male, aged 29 years, S/o.Johnson, who

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is confined at Central Prison, Vellore, and set aside the same and direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner : Mr.S.Senthilvel
For Respondents : Mr.R.Muniyapparaj
Additional Public Prosecutor
assisted by Mr.M.Sylvester John

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 14.09.2022 bearing No.117/BCDFGISSSV/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.

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



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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 one adverse case. The ground case which is the sole substratum of the impugned detention order is Crime No.450 of 2022 on the file of T-12 Poonamallee Police Station for alleged offences under Sections 147, 148, 341, 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.S.Senthilvel, 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 qua captioned HCP, very many averments have been raised/urged. Be that as it may, in the hearing, Mr.S.Senthilvel, learned counsel for petitioner posited his argument on one submission which found favour with us and that one submission turns on the subjective satisfaction arrived at by the detaining authority as regards the imminent possibility of the detenu being enlarged on bail. In this regard, learned counsel for petitioner took us through paragraph 4 of the grounds of detention and pointed out that subjective satisfaction as regards imminent possibility has been arrived at by the detaining authority by relying on what according to the detaining authority is the steps being taken by the 'relatives' of the detenu for filing bail application on behalf of the detenu. Learned counsel thereafter took us through the grounds of detention which has been served on the detenu and pointed out there is special report from the sponsoring authority at pages 187 and 188 of the booklet and that special report itself is dated 15.09.2022 whereas the impugned detention order is dated 14.09.2022. The simple submission of learned counsel for petitioner is, this is a clear case of non-application of mind and the impugned detention order is flawed as the 15.09.2022 special report obviously could not have been before the detaining authority on



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14.09.2022. We have no difficulty in accepting this submission as it is clear as day light.

6. However, learned State Additional Public Prosecutor submitted to the contrary and he drew our attention to page No. 186 of the booklet where there is a 161(3) Cr.P.C. statement from the mother of the detenu and this statement is dated 14.09.2022. Learned State Additional Public Prosecutor submitted that it is quite possible to record 161(3) Cr.P.C. statement on 14.09.2022. In response to this, learned counsel for petitioner submitted that the impugned detention order does not talk about the statement from the mother of the detenu but it talks about the statement from the relatives. Be that as it may, there is one other point which weighed in our mind and that one other point is impugned preventive detention order has been served on the detenu at 11:55 hours on 15.09.2022. It is extremely unlikely that the statement recorded on 14.09.2022 could have been, in other words, a neatly calico bound booklet placed before the detaining authority on 15.09.2022. However, we do not propose to enter into this area of surmises and conjectures as the special report is as clear as day light.



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7. In the light of the discussion and dispositive reasoning set out supra, we have no difficulty in coming to the conclusion that the impugned preventive detention order deserves to be dislodged.

8. Apropos, the sequitur is, captioned HCP is allowed. Impugned detention order dated 14.09.2022 bearing reference No.117/BCDFGISSSV/2022 made by the second respondent is set aside and the detenu Thiru.Ebinesar @ Rajan, male, aged 29 years, son of Thiru.Johnson 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.) (D.N.R.,J.)
06.04.2023

Index : Yes / No
Neutral Citation : Yes / No
mmi

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

To

- 1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 9.
- 2.The Commissioner of Police,
Avadi City.

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3.The Superintendent of Prison,
Central Prison, Vellore.

4.The Inspector of Police,
Law and Order,
T-12, Poonamallee Police Station,
Chennai.

5.The Public Prosecutor
High Court, Madras.



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**M.SUNDAR, J.,
and
Dr.D.NAGARJUN , J.,**

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