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H.C.P.No.2245 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.04.2023

CORAM

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

H.C.P.No.2245 of 2022

Usha

.. Petitioner

Vs

- 1.State of Tamil Nadu
Rep. By its Secretary,
Home, Prohibition and Excise Department,
Fort St.George, Chennai – 600 009.
- 2.The Commissioner of Police,
Salem City Police Salem.
- 3.The Superintendent of Prison,
Salem Central Prison, Salem.
- 4.The Inspector of Police,
Sooramangalam Police Station,
Salem City.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus calling for the records relating to the detention order in C.M.P.No.134/Goonda/Salem City/2022 dated 18.10.2022 passed by the 2nd respondent under the Tamil Nadu Act 14 of 1982 and set aside the same subsequently

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direct the respondents to produce petitioner's husband Udayakumar @ David, son of Jayaraj, aged about 37 years the detenu, now confined in Central Prison, Salem before this Court and set him at liberty.

For Petitioner : Dr.S.Manoharan
for Mr.M.Subash

For Respondents : Mr.E.Raj Thilak,
Additional Public Prosecutor

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 the detenu assailing a 'preventive detention order dated 18.10.2022 bearing reference C.M.P.No.134/Goonda/Salem City/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



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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. The ground case which is the sole substratum of the impugned detention order is Crime No.642 of 2022 on the file of Sooramangalam Police Station for alleged offence under Sections 342, 364, 323, 364(A), 506(ii) of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] and Sections 4 and 5 of Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003. 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. Dr.N.Manoharan, learned counsel representing Mr.M.Subash, learned counsel on record for petitioner and Mr.E.Raj Thilak, learned State Additional Public Prosecutor for all respondents are before us.



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5. After hearing Dr.S.Manoharan, learned counsel for petitioner and Mr.E.Raj Thilak, learned State Additional Public Prosecutor for all the respondents, we are of the considered view that the captioned HCP is to be allowed. The reasons i.e., discussion and dispositive reasoning are as follows:

5.1 Dr.S.Manoharan, learned counsel for petitioner took us through the impugned preventive detention order and more particularly paragraph 4 thereof to say that subjective satisfaction arrived at by the detaining authority qua imminent possibility of detenu being enlarged on bail is flawed. To be noted, the most relevant portion of paragraph 4 of the impugned preventive detention order reads as follows:

'4. I am aware that Udayakumar @ David is in remand in the case of Sooramangalam PS.Cr.No.642/2022 u/s 342, 364, 323, 364 (A), 560(ii) IPC and Section 4,5 of the Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003 and so far no bail petition filed on behalf of him in this case. Further, it is learnt that the relative of Udayakumar @ David is taking efforts to move bail application to take him out on bail in the above case. I am also aware that bail has



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been granted by the High Court of Madras vide Crl.O.P.No.3285/2018, dated 9.02.2018 for a similar case of Annadanapatti PS Cr.No.765/2017, u/s 364-A, 395, 397 IPC registered against one Thiru.Settu @ Dharanitharan, who was subjected to remand on 2.01.2018. Hence, I infer that there is a real possibility of his (Udayakumar @ David) coming out on bail in the above case, since bails are granted for similar cases by the concerned Court or the higher Court after efflux of certain time...'

5.2 Adverting to aforementioned portion of paragraph 4 of the impugned preventive detention order, learned counsel for petitioner submitted that Section 364(A) IPC alone is common phenomenon and otherwise two cases are not comparable at all.

5.3 In response to the above argument, learned State Additional Public Prosecutor submitted that the two cases are broadly comparable. We are unable to accept this argument as there is no allegation of any violation of Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003 at all in Settu @ Dharanitharan's case.



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5.4 Be that as it may, we find another striking difference between Dharanitharan's case and the case on hand. This striking difference is, in Dharanitharan's case, there is no previous case against Dharanitharan whereas in the case on hand, even according to the impugned preventive detention order, there are two adverse cases which have been set out in the impugned preventive detention order itself.

5.5 In the light of the discussion and dispositive reasoning set out in the preceding paragraphs supra, we have no difficulty in saying that the subjective satisfaction arrived at by the detaining authority qua imminent possibility of detenu being enlarged on bail is clearly flawed.

6. Though several points have been raised/urged in the support affidavit, in the hearing Dr.S.Manoharan, learned counsel for petitioner exhorted the above mentioned point and as that found



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favour with us, we are not entering upon a legal drill for considering the other points.

7. Apropos, the sequitur is, captioned HCP is allowed. Impugned detention order dated 18.10.2022 bearing reference C.M.P.NO.134/Goonda/Salem City/2022 made by the second respondent is set aside and the detenu Thiru.Udayakumar @ David, male, aged 37 years, son of Thiru.Jayaraj, 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.)
24.04.2023

Index : Yes
Neutral Citation : Yes
mmi

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

To

- 1.The Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George, Chennai – 600 009.
- 2.The Commissioner of Police,
Salem City Police Salem.

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

4.The Inspector of Police,
Sooramangalam Police Station,
Salem City.

5.The Public Prosecutor
High Court, Madras.



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

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