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H.C.P.No.2267 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.2267 of 2022

Saroja
W/o.Saminathan

.. Petitioner/Mother of Detenu

Vs.

1.State of Tamilnadu,
Rep. by the 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



H.C.P.No.2267 of 2022

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 detention order in C.M.P.No.133/Goonda/Salem City/2022, dated 18.10.2022 passed by the 2nd respondent under the Tamilnadu Act 14 of 1982 and set aside the same subsequently direct the respondents to produce petitioner's son Kumar, son of Saminathan aged about 31 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.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 detenu assailing a 'preventive detention order dated 18.10.2022 bearing reference C.M.P.No.133/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.



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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 one adverse case and one ground case. The ground case which is the substratum of the impugned detention order is Crime No.642 of 2022 on the file of Sooramangalam Police Station for an alleged offence under Sections 342, 364, 323, 364(A) and 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.S.Manoharan, learned counsel representing the counsel on record



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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.

5. In the support affidavit of captioned HCP several points have been urged/raised but in the hearing Dr.S.Manoharan, learned counsel for petitioner projected his campaign against the impugned preventive detention order on one point and that one point finds favour with us. To be noted, this one point pertains to subjective satisfaction arrived at by the detaining authority qua imminent possibility of detenu being enlarged on bail. Elaborating on this point, learned counsel took us through paragraph 4 of the impugned detention order and the most relevant portion reads as follows:

'4) I am aware that Kumar is in remand in the case of Sooramangalam PS.Cr.No.642/2022 u/s.342, 364, 323, 364(A), 506(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 Kumar is taking efforts to move bail application to take him out on bail in the above case. I am also aware that bail has been granted by the High Court of Madras vide Crl.O.P.No.3825/2018, dated 9.2.2018 for a similar case of



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Annadanapatti PS Cr.No.765/2017, u/s.364(A), 395, 397 IPC

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registered against one Thiru.Settu @ Dharanitharan, who was subjected to remand on 2.1.2018.'

The above portion/narrative speaks for itself as the ground case is one under Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003, whereas the bail order with which it has been compared is for alleged offences under Sections 364(A), 395 and 397 of IPC. This case of one *Settu @ Dharanitharan* with which the ground case has been compared turns on Section 395, 397 decoity and therefore the comparison is clearly one of comparing Apples and Oranges.

6. We also had the benefit of perusing the bail order in *Settu @ Dharanitharan* case. A careful perusal of this order brings to light that in *Settu @ Dharanitharan* case there was no previous case pending against the petitioner, whereas in the case on hand, even according to the impugned preventive detention order there is one adverse case. On this score also the two cases are clearly not comparable.

7. In the light of the narrative, discussion and dispositive reasoning



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thus far, we have no hesitation in saying that subjective satisfaction qua imminent possibility of detenu being enlarged on bail is clearly flawed. The sequitur is impugned preventive detention order deserved to be dislodged.

8. Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 18.10.2022 bearing reference C.M.P.No.133/Goonda/Salem City/2022 made by the second respondent is set aside and the detenu Thiru.Kumar, aged 31 years, son of Thiru.Saminathan, now detained in Central Prison, Salem 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, Salem.



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To

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- 1.The 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.
- 5.The Public Prosecutor
High Court, Madras.



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

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