



H.C.P.No.2311 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.2311 of 2022

Ambika
W/o.Raji

... Petitioner
Mother of the detenu

Vs.

1. State of Tamil Nadu
Represented by its Secretary
Prohibition and Excise Department
Fort St.George
Chennai – 600 009
2. The Commissioner of Police
Tambaram
Tambaram City
3. The Superintendent of Prison
Central Prison Puzhal
Chennai
4. The Inspector of Police
Somangalam Police Station
Chennai

... Respondents

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Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus calling for the records of the detention dated 15.10.2022 in detention order BCDFGISSSV No.163/2022 on the file of the second respondent herein and quash the same and direct the respondents herein to produce the body of the detenu Sathish, Son of Duraisamy, Hindu aged about 30 years who is now confined in Central Prison Puzhal before this Court and set him at liberty.

For Petitioner : Mr.R.Subramanian
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 15.10.2022 bearing reference BCDFGISSSV No.163/2022' [hereinafter 'impugned detention order' for the sake of convenience and brevity]. To be noted, fourth respondent is the sponsoring authority and

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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 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.179 of 2022 on the file of T-11, Somangalam Police Station was initially registered for an alleged offences under Sections 302 of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] and subsequently altered to Sections 120B, 147, 148, 341 and 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



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impugned detention order, it is not necessary to delve into the factual matrix or be detained further by facts.

4.Mr.R.Subramanian, learned 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. In the support affidavit qua captioned HCP, several grounds/points have been urged/raised. However, in the hearing, learned counsel for petitioner posited his argument on one point which has found favour with us. This one point turns on subjective satisfaction arrived at by the Detaining Authority qua imminent possibility of detenu being enlarged on bail. Elaborating on this, learned counsel for petitioner took us through paragraph 4 of the impugned preventive detention order and that portion of paragraph 4 which is most relevant qua point reads as follows:

'4..... Further it is pertinent to note that in a similar case, registered at Kundrathur Police Station Cr.No.825/2021 u/s. 364, 302, 201, 147, 148, 294(b) and 212 of IPC, bail was granted to the accused Hussain Sherif @ Sherif Hussain by the Judicial Magistrate



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Court, Sriperumbudur vide Crl.M.P.No.81 of 2022 on 28.01.2022.

Hence, I infer that it is very likely of her coming out on bail in T-11, Somangalam Police Station Cr.No.179 /2022 since in the similarly placed cases, bail were granted by the courts after a lapse of time.....'

6. We had the benefit of perusing the bail order dated 28.01.2022 in the case of Hussain Sherif @ Sherif Hussain. A careful perusal of Hussain Sherif's case at Page 497 of the booklet brings to light that it is a case of default bail under Section 167(2) of the 'Code of Criminal Procedure, 1973 (2 of 1974)' ['Cr.P.C' for the sake of brevity]. Therefore, taking a default bail order as benchmark for subjective satisfaction as regards possible regular bail in the ground case i.e., imminent possibility of detenu being enlarged on bail is clearly flawed. This means i.e., the sequitur is, the impugned preventive detention order deserves to be dislodged.

7. Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 15.10.2022 bearing reference BCDFGISSSV No.163/2022 made by the second respondent is set aside and the detenu Thiru.Sathish, aged 30 years, son of Thiru.Raji, is directed to be set at

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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.)

18.04.2023

Index : Yes

Speaking

Neutral Citation : Yes

gpa

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

To

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

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and
M.NIRMAL KUMAR, J.,

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