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HCP No.2362 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.03.2023

Coram

The Hon'ble Mr. Justice **M.SUNDAR**
and
The Hon'ble Mr. Justice **M.NIRMAL KUMAR**

H.C.P. No.2362 of 2022

Keerthana

.. Petitioner

Vs.

- 1.State of Tamil Nadu, represented by
The Secretary to Government,
Department of Home, Prohibition and Excise,
Secretariat, Fort St. George,
Chennai.
- 2.The Commissioner of Police,
Greater Chennai,
Office of Commissioner of Police,
Vepery, Chennai – 7.
- 3.The Superintendent of Police,
Central Prison, Puzhal-II,
Puzhal, Chennai.
- 4.Inspector of Police,
C-1 Flower Bazaar Police Station,
Chennai.

.. Respondents



HCP No.2362 of 2022

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus calling for the records in Memo No.258/BCDFGISSSV/2022 passed by the second respondent on 26.08.2022 on the file of the second respondent and quash the same as illegal and consequently direct the respondent to produce petitioner husband Dilip Kumar son of Rajasekar aged about 21 years before this Court, who is now detained in Central Prison, Puzhal-II and set him at liberty.

For Petitioner : Mr.A.Elumalai
For Respondents : Mr.R.Muniyapparaj
Additional Public Prosecutor
Assisted by Mr.M.Sylvester John

ORDER

[Order of the Court was made by M.NIRMAL KUMAR, J.]

Captioned 'Habeas Corpus Petition' [hereinafter 'HCP' for the sake of convenience and brevity] has been filed by the wife of the detenu assailing 'detention order dated 26.08.2022 bearing reference Memo No.258/BCDFGISSSV/2022' [hereinafter 'impugned detention order' for the sake of convenience]. To be noted, the fourth respondent is the sponsoring authority and the second respondent is the detaining authority as impugned detention order has been made by the second respondent.



HCP No.2362 of 2022

WEB COPY

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.203 of 2022 on the file of C-1 Flower Bazaar Police Station for alleged offences under Section 174 Cr.P.C. altered to Section 302 '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. A. Elumalai, learned counsel for petitioner and



HCP No.2362 of 2022

Mr.R.Muniyapparaj, learned Additional Public Prosecutor assisted by

Mr.M.Sylvester John learned counsel for respondents are before us.

5.Learned counsel for petitioner predicated his campaign against the impugned detention order on one short point and that is, similar case referred to by the detaining authority pertains to Crime No.59 of 2021 for the offence under Sections 147, 148, 449, 324 and 302 IPC and bail was granted in CrI.M.P.No.10485 of 2021 dated 26.05.2021 due to the existing Covid-19 situation. But this is not the case of the petitioner and hence, the case referred to by the detaining authority is dissimilar.

6.We had the benefit of perusing the said booklet and we find that the petitioner's submission is correct. Therefore, referring to a similar case which is not similar by the detaining authority vitiates the impugned detention order.

7.Ergo, the sequitur is, captioned HCP is allowed and the detention order dated 26.08.2022 bearing reference Memo



HCP No.2362 of 2022

No.258/BCDFGISSSV/2022 made by the second respondent is set aside and the detenu Thiru.Dilip Kumar, aged 21 years, son of Thiru.Rajasekar is directed to be set at liberty forthwith unless required in connection with any other case. There shall be no order as to costs.

(M.S,J.) (M.N.K.,J.)
27.03.2023

Index : Yes / No

Speaking / Non-speaking

Neutral Citation : Yes / No

cse

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

To

- 1.The Secretary to Government,
Department of Home, Prohibition and Excise,
Secretariat, Fort St. George, Chennai.
- 2.The Commissioner of Police,
Greater Chennai, Office of Commissioner of Police,
Vepery, Chennai – 7.
- 3.The Superintendent of Police,
Central Prison, Puzhal-II,
Puzhal, Chennai.
- 4.Inspector of Police,
C-1 Flower Bazaar Police Station, Chennai.
- 5.The Public Prosecutor,
High Court of Madras, Chennai - 104.



WEB COPY



HCP No.2362 of 2022

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

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H.C.P.No.2362 of 2022

27.03.2023