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H.C.P.No.2349 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.2349 of 2022

E.Nallammal

.. Petitioner

Vs

- 1.The State of Tamil Nadu
Rep. By its Secretary to Government
Home, Prohibition and Excise Department,
Fort.St George, Chennai - 9.
- 2.The Commissioner of Police,
Greater Chennai.
- 3.The Superintendent of Prison,
Central Prison, Puzhal, Chennai.
- 4.State Rep. By The Inspector of Police,
J-7 Velachery 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 of the 2nd respondent pertaining to the order made in BCDFGISSSV No.367 of 2022 dated 17.10.2022 in detaining the detenu under the Tamil Nadu Act 14/1982 as a Goonda and quash the same and direct the respondents to produce the detenu namely Prasanth, aged 23



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years, son of Elumalai, who is detained at Central Prison, Puzhal, Chennai before this Court and set him at liberty.

For Petitioner : Mr.P.Sridhar

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 mother of the detenu assailing a 'preventive detention order dated 17.10.2022 bearing reference BCDFGISSSV No.367/2022' [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 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

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the detenu is a 'Goonda' within the meaning of Section 2(f) of Act 14 of 1982.

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3. The ground case which is the sole substratum of the impugned detention order is Crime No.462 of 2022 on the file of J-7 Velacherry Police Station for alleged offences under Section 174 of 'The Code of Criminal Procedure, 1973 (2 of 1974)' [hereinafter 'CrPC' for the sake of brevity and clarity] subsequently altered into one under Sections 120(B), 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.P.Sridhar, learned counsel on record for petitioner and Mr.E.Raj Thilak, learned State Additional Public Prosecutor for all respondents are before us.

5. To be noted, in support affidavit of captioned HCP, very many points/grounds have been urged/raised but in the hearing one



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point came out strikingly and that one point turns on subjective satisfaction arrived at by the detaining authority qua imminent possibility of detenu being enlarged on bail. A careful perusal of the impugned preventive detention order brings to light that the detaining authority has relied on an order dated 25.05.2021 in CrI.M.P.No.10485 of 2021 on the file of Principal Sessions Judge, Chennai (*Balaji's case* for the sake of convenience as Balaji and two others are petitioners in this case) to arrive at subjective satisfaction in this regard. Relevant articulation qua this point is in paragraph 3 of the impugned preventive detention order and the most relevant/pertinent portion of paragraph 3 in this regard reads as follows:

'...Further, in a similar case, registered at R-3 Ashok Nagar P.S. Cr.No.59/2021 u/s.147, 148, 449, 324 and 302 IPC, the bail was granted to the accused Thiru Balaji by the Court of learned Principal Sessions, Chennai in CrI.M.P.No.10485/2021. Hence, I infer that there is a real possibility of his coming out on bail in J-7 Velachery Police Station Crime No.462/2022 by filing another bail application before the appropriate court, since, in similarly placed cases, bail was granted by the courts after a lapse of time.....'

6. We had the benefit of perusing the bail order in *Balaji's*



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case and that it will suffice to extract and reproduce paragraph 5 of the bail order of learned Sessions Judge in *Balaji's case*, which reads as follows:

'5. The petitioners have been in custody for the past 75 days. No previous case is reported as against the petitioners. Considering the duration of custody and stage of the case and existing Covid 19 situation, this court is inclined to grant bail to the petitioners subject to condition.'

7. The above nails the matter. *Balaji's case* bail order turns largely on then obtaining Covid-19 situation. Therefore, the comparison of *Balaji's case* with the ground case for arriving at subjective satisfaction is clearly a flawed exercise as the determinants for grant of bail in *Balaji's case* are completely different. To be noted, that ground was not available as on the date of impugned preventive detention order.

8. As the above point turns heavily on matters of record learned State Additional Public Prosecutor really does not have much of a say. To be noted, learned Prosecutor did say that *Balaji's case* is comparable with the ground case but this point does not cut ice with



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us as comparison is not just regarding alleged offences but is largely regarding imminent possibility of being enlarged on bail.

9. The narrative thus far leaves this Bench with the considered view that the subjective satisfaction arrived at by the detaining authority with regard to imminent possibility of detenu being enlarged on bail is clearly impaired / flawed and therefore the impugned detention order deserves to be dislodged.

10. Apropos, the sequitur is, captioned HCP is allowed. Impugned detention order dated 17.10.2022 bearing reference BCDFGISSSV.No.367/2022 made by the second respondent is set aside and the detenu Thiru.Prasanth, male, aged 23 years, Son of Thiru.Elumalai, 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 / No
Neutral Citation : Yes / No
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P.S: Registry to forthwith communicate this order to Jail authorities in Central Prison, Puzhal, Chennai – 600 066.

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To

- 1.The Secretary to Government
Home, Prohibition and Excise Department,
Fort.St George, Chennai - 9.
- 2.The Commissioner of Police,
Greater Chennai.
- 3.The Superintendent of Prison,
Central Prison, Puzhal, Chennai.
- 4.The Inspector of Police,
J-7 Velachery Police Station,
Chennai.
- 5.The Public Prosecutor,
High Court, Madras.

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

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