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H.C.P.No.2351 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.04.2023

CORAM

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

H.C.P.No.2351 of 2022

Raja

.. Petitioner

Vs

- 1.State of Tamil Nadu rep. By its
Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George, Chennai – 600 009.
- 2.The Commissioner of Police,
Greater Chennai.
- 3.The Superintendent of Prison,
Central Prison, Puzhal, Chennai.
- 4.State rep. By Inspector of Police,
J7 Velachery Police Station,
Chennai.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus to call for the records of the second respondent pertaining to the order made in BCDFGISSSV No.369 of 2022 dated 17.10.2022 in detaining the detenu under the Tamil Nadu Act 14 of 1982 as a Goonda and quash the same and direct



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the respondents to produce the detenu, the petitioner's son namely Seenuvasan, aged 25 years, son of Raja, who is detained at the Central Prison, Puzhal, Chennai before this Court and set him at liberty.

For Petitioner : Mr.P.Sridhar
For Respondents : Mr.R.Muniyapparaj
Additional Public Prosecutor
assisted by Mr.M.Sylvester John

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 the father of the detenu assailing a 'preventive detention order dated 17.10.2022 bearing reference BCDFGISSSV No.369/2022' [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



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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. 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.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 qua captioned HCP, very many grounds have been raised/urged but in the hearing, learned counsel for petitioner posited his argument on one point and that one point is subjective satisfaction arrived at by the detaining authority as regards imminent possibility of the detenu being enlarged on bail. This aspect of the matter is articulated in paragraph 3 of the preventive detention order and relevant portion of paragraph 3 of the impugned preventive detention order reads as follows:

'3..... 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 Velacherry 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* case made by Sessions Court as the same has been furnished to the detenu as part of the grounds booklet and that bail order is at pages



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207 to 209 of grounds booklet. We find that *Balaji's* bail order is not comparable for three reasons and they are as follows:

(a) *In Balaji's case it is for alleged offence under Sections 147, 148, 449, 324, 302 IPC whereas in the ground case, it is for alleged offences under Sections 120(B) and 302 IPC;*

(b) *Paragraph 5 of Balaji's bail order 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.'

This means that Covid 19 situation has impelled the Sessions Judge to pass the order;

(c) *In paragraph 3 of Balaji's bail order, learned Sessions Judge has captured the point that this Court (Honourable High Court) has granted bail to the co-accused.*

7. In the light of the aforementioned three clear and striking points we are of the view that taking *Balaji's case* as a bench mark (for comparing it with the ground case) and arriving at subjective



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satisfaction regarding imminent possibility of the detenu being enlarged on bail is clearly flawed. This means that the subjective satisfaction arrived at by the detaining authority is flawed and the consequence is impugned preventive detention order deserves to be dislodged.

8. Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 17.10.2022 bearing reference BCDFGISSSV No.369/2022 made by the second respondent is set aside and the detenu Thiru.Seenuvasan, male, aged 25 years, S/o.Thiru.Raja, 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.)
20.04.2023

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



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To

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- 1.The Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George, Chennai – 600 009.
- 2.The Commissioner of Police,
Greater Chennai.
- 3.The Superintendent of Prison,
Central Prison, Puzhal, Chennai.
- 4.The Inspector of Police,
J7 Velachery Police Station,
Chennai.
- 5.The Public Prosecutor
High Court, Madras.



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