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H.C.P.No.2421 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.06.2023

Coram

THE HONOURABLE MR.JUSTICE **M.SUNDAR**
and
THE HONOURABLE MR.JUSTICE **R.SAKTHIVEL**

H.C.P.No.2421 of 2022

Devaraj U

.. 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,
Office of Commissioner of Police,
Salem City, Salem District.
- 3.The Superintendent of Central Prison,
Central Prison, Salem, Salem District.
- 4.The Inspector of Police,
Azhagapuram Police Station,
Salem City, Salem District.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus to produce the body of the detenu by name Boopathy, son of Udayakumar, aged 36 years, presently confined at Central Prison, Salem, before this Court and set him at liberty forthwith, after calling for the records pertaining to the detention order dated 14.11.2022 in C.M.P. No.144/Goonda/Salem City/2022 passed by the second respondent and quash the same.



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For Petitioner : Mr.R.Sankarasubbu
for Mr.B.Mohan
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 brother of detenu assailing a 'preventive detention order dated 14.11.2022 bearing reference C.M.P. No.144/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.

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.



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3. There is no adverse case. The ground case which is the sole substratum of the impugned detention order is Crime No.744 of 2022 on the file of Fairlands Police Station for the alleged offences under Sections 385, 420, 387 and 506(ii) 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.R.Sankarasubbu, learned counsel representing the counsel on record for petitioner and Mr.E.Raj Thilak, learned State Additional Public Prosecutor for all respondents are before us.

5. In the support affidavit qua captioned HCP several grounds have been raised/urged but in the hearing, Mr.R.Sankarasubbu, learned counsel representing the counsel on record for petitioner predicated his campaign against the impugned preventive detention order on one point and that one point finds favour with us. To be noted that one point turns on imminent possibility of detenu being enlarged on bail and the subjective satisfaction arrived at by the detaining authority in this regard.



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6. As regards aforesaid subjective satisfaction, the detaining authority (as is evident from the impugned preventive detention order) has relied on bail order dated 29.06.2018 in Cr.M.P. No.2854 of 2018 on the file of Judicial Magistrate V, Salem, in the case of Boopathy (hereinafter 'Boopathy's bail order' for the sake of convenience and clarity).

7. We had the benefit of perusing Boopathy's bail order which has been furnished to the detenu as part of the grounds booklet.

8. Paragraph 5 of Boopathy's bail order is significant and therefore we deem it appropriate to extract and reproduce the same. Paragraph 5 of the Boopathy's bail order reads as follows:

'5. Considering the facts and circumstances of this case, the defacto complainant has appeared before this court on filed affidavit stating that she has no objection in releasing the accused on bail. This is the 2nd petition. The accused is in incarceration for more than 28 days. The investigation still pending. Still, some of the documents are yet to be secured. The money involved is to the tune of 40 lakhs. The accused practiced deceptive method to cheat the defacto complainant. The accused



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also executed false sale agreement to defacto complainant without the property in his name. The defacto complainant also stated that also appeared in person and filed affidavit stating that the matter has been compromised and amicably settled the matter. She has no objection in releasing the accused on bail as he agreed to settle the matter after releasing from the prison. Though, the materials prima facie reveals that the accused cheated the defacto complainant, she herself sated no objection on bail. At this point of time the material investigation ought have been completed.'

9. The aforementioned paragraph speaks for itself. In other words, Boopathy's bail order is one where there has been compromise between the parties and therefore relying on the same for arriving at subjective satisfaction regarding imminent possibility of detenu being enlarged on bail qua ground case is clearly flawed. This Court has repeatedly held that such impaired subjective satisfaction vitiates a preventive detention order.

10. The sequitur qua the narrative, discussion and dispositive reasoning thus far is, impugned preventive detention order deserves to be dislodged.



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11. Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 14.11.2022 bearing reference C.M.P. No.144/Goonda/Salem City/2022 made by the second respondent is set aside and the detenu Thiru.Boopathy, aged 36 years, son of Thiru.Udhayakumar, 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.) (R.S.V.,J.)
19.06.2023

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, Salem.

To

- 1.The Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George, Chennai – 9.
- 2.The Commissioner of Police,
Office of Commissioner of Police,
Salem City, Salem District.
- 3.The Superintendent of Central Prison,
Central Prison, Salem, Salem District.
- 4.The Inspector of Police,
Azhagapuram Police Station,
Salem City, Salem District.



5. The Public Prosecutor,
High Court, Madras.

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**M.SUNDAR, J.,
and
R.SAKTHIVEL, J.,**

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