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H.C.P.No.2437 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.03.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

H.C.P.No.2437 of 2022

Hasina
W/o.Jafar Ali

.. Petitioner /
Detenu's mother

Vs.

1. The Secretary to Government
Home, Prohibition and Excise Department
Government of Tamil Nadu
Fort. St.George
Chennai – 600 009
2. The District Collector and District Magistrate
Office of the District Collector and District Magistrate
Kallakurichi
3. The Superintendent of Police
Office of the Superintendent of Police
Kallakurichi
4. The Superintendent of Prison
Central Prison, Cuddalore
5. Inspector of Police

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Chinna Salem Police Station
Chinna Salem
Kallakurichi District

.. 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 herein in his proceedings under D.O.No.C2/56/2022 dated 26.09.2022 and quash the same and consequently direct the respondents to produce her son by name Ibrahim, male, aged 26 years, son of Jaffar Ali confined in Central Prison, Cuddalore before this Court and set him at liberty.

For Petitioner : Mr.T.Sivagnanasambandan
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 the mother of detenu assailing a 'preventive detention order dated 26.09.2022 bearing reference D.O.No.C2/56/2022' [hereinafter 'impugned detention order' for the sake of convenience and brevity]. To be noted, fifth respondent is the sponsoring authority and second respondent is

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the detaining authority as the 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 no adverse case. This solitary case which is the sole substratum of the impugned detention order is Crime No.236 of 2022 on the file of Chinnasalem Police Station for an alleged offence under Sections 147, 148, 294(b), 323, 324, 332, 336, 353, 435, 436, 379 and 506(ii) of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] read with Sections 3, 4 and 5 of Tamil Nadu Property (Prevention of Damage and Loss) Act, 1992. Owing to the nature



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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.T.Sivagnanasambandan, 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. Notwithstanding very many averments and grounds raised in the support affidavit, in the hearing Mr.T.Sivagnanasambandan, learned counsel for petitioner predicated his campaign against the impugned detention order on three points and they are as follows:

a) As regards the subjective satisfaction of detaining authority qua imminent possibility of detenu being enlarged on bail qua paragraph 5 of the impugned detention order, the detaining authority has said that the Sponsoring Authority received reliable information that his relatives are taking steps to file bail application but there is no statement from the relatives.

To put it differently, there is nothing to buttress what has been



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described as 'reliable information';

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b) As regards the same subjective satisfaction, Sponsoring Authority has relied on an order dated 23.03.2023 made in C.M.P.No.2447 of 2020 on the file of the Sessions Court, Villupuram vide Crime No.144 of 2020 for alleged offences under Sections 147, 148, 294(b), 448, 323, 324, 506(ii) IPC read with Section 3 of Tamil Nadu Property (Prevention of Damage and Loss) Act of Ulundurpet Police Station but this really is not a similar case as the ground case turns on offences under Sections 379, 436, 435, 353, 336 and 332 of IPC also;

c) The aforementioned order of the Sessions Court has been given in the grounds booklet as an annexure. It is at page 79, it is in English but a Tamil translation has not been provided. Learned counsel submitted that detenu has difficulty in understanding legal language in which the bail order is couched and therefore it has impaired his constitutional safeguard to make an effective representation against the impugned preventive detention order;

6. In response to the aforesaid three points, learned Prosecutor



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submitted to the contrary and submissions of learned Prosecutor are as follows:

a) As regards reliable information, learned Prosecutor submitted that it is reliable information received by the Sponsoring Authority;

b) As regards the second point, it was submitted that the two cases are largely similar;

c) As regards the third point, learned Prosecutor really did not have much of a say as the obtaining position is no Tamil translation of the bail order has been provided in the grounds booklet.

7. We carefully considered the three points that have been urged / exhorted before us. We also considered the rival submissions. The discussion and dispositive reasoning are as follows:

a) As regards the first point of bald averment that 'reliable information' was received by Sponsoring Authority is not good enough qua subjective satisfaction qua imminent possibility of detenu being enlarged on bail. Therefore, this point enures to the



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benefit of the petitioner;

b) As regards the second point, we find that two cases are dissimilar as the provisions of IPC referred to by learned counsel for petitioner are not there in the bail order which has been treated as a similar case and this by itself makes the two cases vastly different. This means that subjective satisfaction qua imminent possibility of detenu being enlarged on bail is impaired. More importantly, a careful perusal of the bail order brings to light that the similar case of Thirupathy and Pasupathi in the Villupuram Sessions Court is vastly different as that was a case where the injured were admitted in the hospital and discharged. This leaves us with the conclusion that comparison of these two cases is a case of comparison of Apples and Oranges or Chalk and Cheese. The sequitur is, second point also enures to the benefit of the petitioner.

c) As regards the third point, we respectfully remind ourselves of *Pownammal* case law [*Pownammal Vs. State of Tamil Nadu* reported in (1999) 2 SCC 413] wherein Hon'ble



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Supreme Court addressed itself to the question of furnishing the detenu with the copies in a language which the detenu is conversant with and answered the same. We are informed that literacy level of the detenu is X Standard and he is a school drop out. The question which the Hon'ble Supreme Court addressed itself to is captured in paragraph 6 and the answer is set out in paragraph 16. Paragraphs 6 and 16 of **Pownammal** case law {as in SCC journal} read as follows:

'6. The short question that falls for our consideration is whether failure to supply the Tamil version of the order of remand passed in English, a language not known to the detenue, would vitiate her further detention.

16. For the above reasons, in our view, the non-supply of the Tamil version of the English document, on the facts and in the circumstances, renders her continued detention illegal. We, therefore, direct that the detenue be set free forthwith unless she is required to be detained in any other case. The appeal is accordingly allowed. '

Pownammal case law principle or ratio applies in all fours



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to the case on hand. Therefore, the third point also enures to the

benefit of the petitioner.

8. Apropos, the sequitur is, captioned HCP is allowed. Impugned detention order dated 26.09.2022 bearing reference D.O.No.C2/56/2022 made by the second respondent is set aside and the detenu Thiru.Ibrahim, aged 26 years, son of Thiru. Jafar Ali, 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.)

29.03.2023

Index : Yes/No
Speaking/Non-speaking order
Neutral Citation : Yes
gpa

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



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To

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Chinna Salem Police Station
Chinna Salem
Kallakurichi District
6. The Public Prosecutor
Madras High Court



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

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