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H.C.P.No.2441 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.06.2023

Coram

THE HON'BLE MR.JUSTICE **M.SUNDAR**
and
THE HON'BLE MRS. JUSTICE **K. GOVINDARAJAN THILAKAVADI**

H.C.P.No.2441 of 2022

K.Kowsalya

.. Petitioner

VS

1.The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Fort St.George, Chennai – 9.

2.The Commissioner of Police,
Greater Chennai,
Office of the Commissioner of Police,
Vepery, Chennai.

3.The Superintendent of Police,
Central Prison – II, Puzhal, Chennai.

4.The Inspector of Police,
F5, Choolaimedu 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 pertaining to the order of detention passed by the second respondent in his proceedings in No.412/BCDFGISSSV/2022 dated 08.11.2022 and quash the same as illegal and produce the detenu namely Karan @



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Karankumar, S/o.Kathirvel, aged 22 years, now he is confined in Central Prison, Puzhal II, Chennai before this Court and set him at liberty.

For Petitioner : Mr.C.Raja
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 mother of the detenu assailing a 'preventive detention order dated 08.11.2022 bearing reference No.412/BCDFGISSSV/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.

3. There are four adverse cases. The ground case which is the sole substratum of the impugned detention order is Crime No.391 of 2022 on the file of F-5 Choolaimedu Police Station for alleged offence under Sections 341, 294(b), 323, 392, 397, 427, 336 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.C.Raja, 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, multiple points have been raised but one point urged by learned counsel for petitioner in the hearing finds favour with us and that one point turns on subjective satisfaction of the detaining authority qua imminent possibility of the detenu being enlarged on bail.



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6. In the grounds of detention, the detaining authority has relied on a bail order dated 18.10.2019 made by the learned Principal Judge, Chennai in the case of one Arun @ Arunkumar in CrI.M.P.No.21605 of 2019 vide Crime No.275 of 2019 on the file of G-3 Kilpauk Police Station (hereinafter '*Arun @ Arunkumar's case*' for the sake of convenience and clarity).

7. The bail order in *Arun @ Arunkumar's case* has been furnished to the detenu as part of grounds booklet and the same is at page No.397. A careful perusal of the bail order more particularly paragraph 5 thereof brings to light that *Arun @ Arunkumar's case* was one where there was no previous case whereas in the case on hand, even according to the detaining authority and the grounds of detention, there are as many as four adverse cases.

8. In response to this, learned Prosecutor submitted that the offences are comparable. This really does not find favour with us owing to the facts and circumstances of the case on hand. The reason is, in *Arun @ Arunkumar's case*, learned Principal Judge has specifically adverted to the point that there was no previous case and therefore that has tilted the discretion of grant of bail in favour of the petitioner in *Arun @ Arunkumar's case*. In this view of the matter, we are convinced



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that the comparison of two cases is clearly a comparison of apples and oranges. This means that the subjective satisfaction of the detaining authority is clearly impaired. Sequitur is, impugned preventive detention order deserves to be dislodged.

9. Apropos, the sequitur is, captioned HCP is allowed. Impugned detention order dated 08.11.2022 bearing reference No.412/BCDFGISSSV/2022 made by the second respondent is set aside and the detenu Thiru.Karan @ Karankumar, aged 22 years, son of Thiru.Kathirvel, 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.) (K.G.T.,J.)
06.06.2023

Index : Yes / No
Neutral Citation : Yes / No
mmi

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

To

1.The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Fort St.George, Chennai – 9.



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F5, Choolaimedu Police Station,
Chennai.
- 5.The Public Prosecutor
High Court, Madras.



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K. GOVINDARAJAN THILAKAVADI, J.,**

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