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H.C.P.No.2444 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.04.2023

CORAM

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

H.C.P.No.2444 of 2022

Nirosha

.. Petitioner

Vs

1.The Principal Secretary to Government,
Home, Prohibition and Excise Department
Secretariat, Chennai – 600 009.

2.The Commissioner of Police,
Tambaram City.

3.The Superintendent of Prison,
Central Prison, Puzhal,
Chennai - 66.

4.The Inspector of Police,
T-1 Tambaram Nagar 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 in connection with the order of detention passed by the second respondent dated

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25.10.2022 in Memo No.177/BCDFGISSSV/2022 against the petitioner's brother Praveen Joe @ kari, Male, aged 25 years S/o.Stalin, who is confined at Central Prison, Puzhal, Chennai and set aside the same and direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner : Mr.S.Senthilvel
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 sister of detenu assailing a 'preventive detention order dated 25.10.2022 bearing reference BCDFGISSSV No.177/2022' [hereinafter 'impugned preventive 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,



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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 are three adverse cases. The ground case which is the sole substratum of the impugned detention order is Crime No.749/2022 on the file of T-1 Tambaram Police Station for alleged offences under Sections 341, 294(b), 397, 336, 427 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.S.Senthilvel, 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.



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5. In the support affidavit qua captioned HCP, several points/grounds have been urged/raised but in the final hearing, Mr.S.Senthilvel learned counsel for petitioner posited his campaign against the impugned preventive detention order on one ground and that one ground turns on subjective satisfaction arrived at by the detaining authority qua imminent possibility of detenu being enlarged on bail. In this regard, learned counsel drew the attention of this Court to paragraph 4 of the impugned preventive detention order and the most relevant portion of paragraph 4 is as follows:

'4. I am also aware that **Thiru Praveen Joe @ Kari** who was remanded in T-1 Tambaram P.S. Cr.No.739/2022 and 749/2022 has not filed any bail petition so far in the above T-1 Tambaram P.S. Cr.Nos.739/2022 and 749/2022. However, the sponsoring authority has stated that it is learnt that Thiru.Praveen Joe @ Kari's relatives are taking steps to take him out on bail in T-1 tambaram P.S. Cr.No.749/2022 by filing a bail application in appropriate court. Further, it is pertinent to note that in a similar case, registered at Sankar Nagar P.S. Cr.No.617/2021 u/s.341, 336, 427, 392, 397, 506(ii) IPC, bail was granted to the accused Vinoth Kumar @ Vinoth by the Principal Sessions Judge of Kancheepuram District at Chengalpattu in



Crl.M.P.No.5200/2021 on 20.10.2021. Hence, I infer that it is very liely of his coming out on bail in T-1 Tambaram Police Station Cr.No.749/2022 since in the similarly placed cases, bails were granted by the Courts after a lapse of time.....'

6.Adverting to the aforementioned portion of paragraph 4, learned counsel submitted that the subjective satisfaction arrived at by the detaining authority qua imminent possibility of detenu being enlarged on bail is impaired on two counts and they are as follows:

- (1)As regard two cases referred to, namely, Crime Nos.739/2022 and 749 of 2022, they are third adverse case and ground case respectively but when it comes to the inference the detaining authority refers to the ground case and there is no mention about the third adverse case.
- (2)The detaining authority has mentioned that he has learnt from the Sponsoring Authority that the relatives of the detenu are taking steps to take him out on bail but there is no document to support this. In other words, learned counsel submits that this is an unsupported statement made in thin air by the Sponsoring Authority.



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7. In response to the aforesaid point, learned Prosecutor submitted to the contrary and a summation of the arguments of learned Prosecutor are as follows:

- (1) As regards the first point, it was submitted that it will suffice if there is subjective satisfaction qua ground case;
- (2) As regards the second point, it was submitted that there is a Special Report from the Sponsoring Authority and the same is at Page 337 of the grounds booklet.

8. We now consider both the points and the counter points. As regards the first point, we are of the view that even on a demurer i.e., even if it is presumed that there is imminent possibility of the detenu being enlarged on bail in the ground case [Crime No.749/2022] he can still not come out and will remain incarcerated as there is nothing regarding Crime No.739/2022 which is third adverse case. The point is whether there is imminent possibility of detenu being enlarged on bail or is he likely to remain incarcerated. When we say imminent possibility it is not qua time and it is qua probability/possibility. In this view of the matter, we are inclined to sustain the submission of learned counsel for petitioner. We hold that the



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argument of the learned Prosecutor that subjective satisfaction qua ground case alone is sufficient is not acceptable. This takes us to the next point which turns on supporting statement of what the Sponsoring Authority has said. We carefully perused the special report of the Sponsoring Authority which is at Page 337 of the said booklet i.e, grounds booklet. A careful perusal of the same shows that it does not bear a date. This itself makes this document untenable and in any event it is only a self serving report of the Sponsoring Authority and there is no statement from any relative of the detenu, much less statement under Section 161 Cr.P.C. to sustain the subjective satisfaction of the detaining authority that the relatives of the detenu are taking steps to take the detenu out on bail. We also find that the proposal sent by the Sponsoring Authority who is before us does not say anything about this Special Report.

9.As both the facets of one point i.e., point turning on subjective satisfaction arrived at by the detaining authority qua imminent possibility of detenu being enlarged on bail are sustained, the sequitur is, the impugned preventive detention order deserves to be dislodged.

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WEB COPY 10.Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 25.10.2022 bearing reference BCDFGISSSV No.177/2022 made by the second respondent is set aside and the detenu Thiru.Praveen Joe @ Kari, male, aged 25 years, son of Thiru.Stalin 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.)

26.04.2023

Index : Yes / No

Neutral Citation : Yes / No

Speaking Order/Non-Speaking Order

cse

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



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To

- 1.The Principal Secretary to Government,
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Secretariat, Chennai – 600 009.
- 2.The Commissioner of Police,
Tambaram City.
- 3.The Superintendent of Prison,
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- 4.The Inspector of Police,
T-1 Tambaram Nagar Police Station,
Chennai.
- 5.The Public Prosecutor,
High Court, Madras.



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

cse

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