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H.C.P.No.2463 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.04.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

H.C.P.No.2463 of 2022

Fathima Bajila
W/o.Mohamed Niyas

..Petitioner /
Wife of the detenu

Vs.

1. The Secretary to Government
Home, Prohibition and Excise Department
Secretariat
Fort St.George
Chennai – 600 009
2. The Commissioner of Police
Tambaram City
Office of the Commissioner of Police
Sholinganallur
Chennai - 119
3. The Superintendent of Prison
Central Prison, Puzhal,
Chennai
4. State rep. By its
The Inspector of Police
T-1, Tambaram Police Station

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Tambaram
Chennai – 600 045

... Respondents

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Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus calling for the records relating to the petitioner's husband detention under Tamil Nadu Act 14, 1982 vide detention order dated 04.11.2022 on the file of the second respondent herein made in proceedings BCDFGISSSV No.186/2022, quash the same as illegal and consequently direct the respondents herein to produce the petitioner's husband, namely Mohamed Niyas, S/o.Kaleel Raghuman, aged 30 years before this Court and set the petitioner's husband at liberty from detention, now the petitioner's husband detained at Central Prison, Puzhal, Chennai.

For Petitioner : Ms.R.Subadra Devi
for Mr.B.Dhanasekaran

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 wife of the detenu assailing a 'preventive detention order dated 04.11.2022 bearing reference BCDFGISSSV No.186/2022' [hereinafter 'impugned detention order' for the sake of convenience and brevity]. To be



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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.

3. There are six adverse cases. The ground case which is the sole substratum of the impugned detention order is Crime No.735 of 2022 on the file of T-1, Tambaram Police Station for alleged offences under Sections 341, 294(b), 323, 336, 427, 392, 397 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.



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4. Ms. R. Subadra Devi, learned counsel representing the counsel on record for petitioner and Mr. R. Muniyapparaj, learned State Additional Public Prosecutor, assisted by Mr. M. Sylvester John, Advocate, for all respondents are before us.

5. After hearing Ms. Subadra Devi, learned counsel for petitioner and Mr. R. Muniyapparaj, learned State Additional Public Prosecutor for respondents, we are of the view that the captioned HCP has to be allowed, the point, discussion and dispositive reasoning i.e., reasons are as follows:

(i) Though several points have been urged in the support affidavit of captioned HCP, in the hearing learned counsel for petitioner predicated her campaign against the impugned preventive detention order on one point which weighs with us. That one point turns on flaw in subjective satisfaction of detaining authority qua imminent possibility of detenu being enlarged on bail;

(ii) Elaborating on the aforesaid point, learned counsel took us through paragraph 4 of the impugned preventive detention order and submitted that the Detaining Authority has



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arrived at subjective satisfaction qua imminent possibility of detenu being enlarged on bail by saying that the relatives of detenu are taking steps to take him out on bail but this is not supported by any document.

(iii) Learned Prosecutor submitted that reliable information was available to the Detaining Authority. However, on a perusal of the grounds booklet we find that there is no statement under Section 161 of the 'Code of Criminal Procedure, 1973 (2 of 1974)' ['Cr.P.C' for the sake of brevity] from any relative and therefore, we are inclined to accept this limb of the argument of learned counsel for petitioner.

(iv) Elaborating further on the above point, learned counsel submitted that Detaining Authority has relied on a bail order dated 20.10.2021 made in CrI.M.P.No 5200 of 2021 on the file of Principal Sessions Judge of Kancheepuram District at Chengalpattu (to be noted, in this bail order one Vinothkumar @ Vinoth, son of Dinesh Kumar is the petitioner and therefore, this case shall be referred to as 'Vinothkumar's case'). Learned



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counsel submitted that in Vinothkumar's case there was no bad antecedents and that has tilted the discretion of grant of bail in favour of Vinothkumar. Learned Prosecutor in response to this argument submitted that Vinothkumar's case and the ground case are broadly comparable.

(v) We carefully perused the bail order in Vinothkumar's case which is at Pages 743 and 745 of grounds booklet. We find that in the dispositive reasoning part of bail order learned Sessions Judge has clearly returned a finding which reads as follows:

'....Further, no bad antecedent is reported against the petitioner.....'

(vi) In complete contradistinction, in the case on hand even according to the impugned preventive detention order, there are as many as six adverse cases. This means that using Vinothkumar's case as a benchmark to arrive at subjective satisfaction qua imminent possibility of detenu being enlarged on bail is clearly a fatal flaw and therefore, the consequence is that the impugned preventive detention order deserves to be



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dislodged.

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6. Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 04.11.2022 bearing reference BCDFGISSSV No.186/2022 made by the second respondent is set aside and the detenu Thiru.Mohamed Niyas, aged 30 years, son of Thiru.KaleelRaghuman, 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.)

17.04.2023

Index : Yes

Speaking

Neutral Citation : Yes

gpa

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



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To

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Madras High Court, Chennai



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