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H.C.P.No.2492 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.06.2023

Coram

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

H.C.P.No.2492 of 2022

G.Monika

.. Petitioner

VS

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

2.The Commissioner of Police,
Tambaram City,
Office of the Commissioner of Police,
Sholinganallur, Chennai.

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

4.The Inspector of Police,
T-15 Kannagi 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 pertaining to the order of detention passed by the second respondent in his proceedings in BCDFGISSSV No.188/2022 dated 05.11.2022 and quash the same as illegal and produce the detenu namely Gunasekaran @ Gandhi, S/o.Anand, aged 21 years, now he is confined in Central Prison, Puzhal II, Chennai before this Court and set him at liberty.



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For Petitioner : Mr.S.Lokesh
For Respondents : Mr.R.Muniyapparaj
Additional Public Prosecutor
assisted by
Mr.M.Sylvester John

ORDER

[Order of the Court was made by K.GOVINDARAJAN THILAKAVADI, J.]

Captioned 'Habeas Corpus Petition' ['HCP' for the sake of brevity] has been filed by wife of detenu assailing a 'preventive detention order dated 05.11.2022 bearing reference BCDFGISSSV No.188/2022' [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 are two adverse cases. The ground case which constitutes substantial part of substratum of the impugned detention order is Crime No.357 of 2022 on the file of T-15 Kannagi Nagar Police Station for alleged offences under Sections 147, 148, 341, 294(b), 323, 302 r/w 34 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.Lokesh, 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. Though many grounds have been raised in supportig affidavit, the learned counsel for petitioner focused his argument on the ground that the subjective satisfaction arrived at by the detaining authority that there is imminent possibility of the detenu coming out on bail is vitiated as the similar case order relied on by the detaining authority is only an order of dismissal.



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6. As this turns on obtaining facts which are before us learned State Additional Public Prosecutor does not have much of a say.

7. We have perused the grounds of detention and the booklet produced before us. In paragraph 4 of the grounds of detention, the detaining authority has relied on the similar case registered at Sankar Nagar Police Station Crime No.284 of 2019 and stated that the petitioner therein viz., Karan Kumar was granted bail by this Court vide order dated 14.06.2019 in CrI.O.P.No.14395 of 2019. Therefore, the detaining authority infers that it is very likely of the detenu coming out on bail in the ground case.

8. A perusal of the similar case order dated 14.06.2019 in CrI.O.P.No.14395 of 2019 at Page No.401 of the booklet would show that the said petition was dismissed by a learned single Judge of this Court. Relying on the dismissal order to arrive at subjective satisfaction that there is imminent possibility of the detenu coming out on bail would therefore vitiate the detention order.

9. For the above reasons, subjective satisfaction arrived at by the detaining authority as regards imminent possibility of the detenu being



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enlarged on bail is impaired. Therefore, the detention order passed by the detaining authority is liable to be set aside.

10. In the result, this habeas corpus petition is allowed. Impugned detention order dated 05.11.2022 bearing reference BCDFGISSSV No.188/2022 made by the second respondent is set aside and the detenu Thiru.Gunasekaran @ Gandhi, aged 21 years, son of Thiru.Anand, 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.)
12.06.2023

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.
- 2.The Commissioner of Police,
Tambaram City,
Office of the Commissioner of Police,
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3.The Additional Superintendent of Police,
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T-15 Kannagi Nagar Police Station,
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5.The Public Prosecutor
High Court, Madras.



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**M.SUNDAR, J.,
and
K. GOVINDARAJAN THILAKAVADI, J.,**

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