



WEB COPY



H.C.P.No.2495 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.2495 of 2022

M.Muniyammal

.. Petitioner

Vs.

1.State of Tamil Nadu,
Rep. by its Secretary to the Government,
Prohibition and Excise Department,
Fort St.George, Chennai – 600 009.

2.The District Collector and District Magistrate,
Krishnagiri District.

3.The Superintendent of Police,
Office of the Superintendent of Police,
Krishnagiri District.

4.The Superintendent of Prison,
Central Prison, Hasthampatty,
Salem.

5.The Inspector of Police,
Kallavi Police Station,
Kallavi Taluk, Krishnagiri District.

.. Respondents

Page Nos.1/8



H.C.P.No.2495 of 2022

WEB COPY

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 detention order in S.C.No.28/2022 dated 22.08.2022 on the file of the second respondent herein and quash the same and direct the respondents herein to produce the body of the detenu Ramadass son of Mahendran Hindu, aged about 38 years who is now confined in Central Prison, Salem before this Court and set him at liberty.

For Petitioner	:	Mr.T.Dhasarathan
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 detenu assailing a 'preventive detention order dated 22.08.2022 bearing reference S.C.No.28/2022' [hereinafter 'impugned detention order' for the sake of convenience and brevity]. To be noted, fifth respondent is the sponsoring authority and second respondent is the detaining authority as impugned detention order has been made by second respondent.

Page Nos.2/8



H.C.P.No.2495 of 2022

WEB COPY 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. The ground case which is the sole substratum of the impugned detention order is Crime No.88/2022 on the file of Kallavi Police Station for alleged offences under Section 302 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. T. Dhasarathan, learned counsel on record for petitioner and



H.C.P.No.2495 of 2022

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 of captioned HCP many points have been raised/urged but in this hybrid hearing, Mr.T.Dhasarathan learned counsel on record for petitioner who has joined us on the video conferencing platform raised one point which found favour with us. This one point turns on imminent and real possibility of the detenu being enlarged on bail. Elaborating on this submission, learned counsel submitted that the detenu has not filed any bail application in the ground case but the Detaining Authority has arrived at the subjective satisfaction regarding imminent possibility of detenu being enlarged on bail by placing reliance on bail order dated 10.03.2016 in CrI.M.P.No.584 of 2016 on the file of Principal Sessions Court, Krishnagiri which shall hereinafter be referred to as 'Sundarrajan's case' as the petitioner in this CrI.M.P.No.584 of 2016 is one Sundarrajan. Learned counsel pointed out that FIR in Sundarrajan's case has been annexed in the grounds booklet at Pages 112 and 113 but the same is completely illegible. We had the benefit of perusing the same. We find

Page Nos.4/8



H.C.P.No.2495 of 2022

that the same is indeed illegible as contended by the learned counsel for the petitioner. As this point turns on the records before us, learned Additional Public Prosecutor really does not have much of a say.

6.Be that as it may, we also had the benefit of perusing the Sundarrajan's case. In Sundarrajan's case, we find that the learned Principal Sessions Judge has inter alia returned two findings for grant of bail. One finding is that the petitioner's name is not found in the FIR and the other finding is that the deceased is the petitioner's brother and the parents of the deceased have no objection to release the petitioner on bail. Therefore, Sundarrajan's case appears to be a family feud and the determinants that weighed in the mind of the learned Principal Sessions Judge for grant of bail are completely different qua the solitary case on hand which is the substratum of the impugned preventive detention order.

7.Learned Additional Public Prosecutor submitted to the contrary by saying that Sundarrajan's case and the solitary case on which impugned preventive detention order is predicated are broadly comparable. We



H.C.P.No.2495 of 2022

carefully perused the bail order in Sundarrajan's case and we find that the submissions made by the learned counsel for petitioner are correct.

Relevant portion in the penultimate paragraph in Sundarrajan's case reads as follows:

'.....Considering that this petitioner's name is not found in the FIR and deceased is brother of this petitioner and parents of the deceased have no objection to release the accused on bail'

Therefore, it is clearly a case of comparing 'Apples and Oranges'. This means that the subjective satisfaction arrived at by the Detaining Authority qua imminent possibility of detenu being enlarged on bail is clearly flawed. This further means that the impugned detention order deserves to be dislodged.

8.Apropos, the sequitur is, captioned HCP is allowed. Impugned detention order dated 22.08.2022 bearing reference S.C.No.28/2022 made by the second respondent is set aside and the detenu Thiru.Ramadass, male,



H.C.P.No.2495 of 2022

aged 38 years, son of Thiru.Mahendiran 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 / No

Speaking / Non-speaking

Neutral Citation : Yes / No

cse

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

To

- 1.The Secretary to the Government,
Prohibition and Excise Department,
Fort St.George, Chennai – 600 009.
- 2.The District Collector and District Magistrate,
Krishnagiri District.
- 3.The Superintendent of Police,
Office of the Superintendent of Police, Krishnagiri District.
- 4.The Superintendent of Prison,
Central Prison, Hasthampatty, Salem.
- 5.The Inspector of Police,
Kallavi Police Station,
Kallavi Taluk, Krishnagiri District.
- 6.The Public Prosecutor
High Court, Madras.

Page Nos.7/8



WEB COPY



H.C.P.No.2495 of 2022

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

cse

H.C.P.No.2495 of 2022

17.04.2023

Page Nos.8/8