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H.C.P.No.2520 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.06.2023

Coram

THE HON'BLE MR.JUSTICE **M.SUNDAR**
and
THE HON'BLE MR.JUSTICE **R.SAKTHIVEL**

H.C.P.No.2520 of 2022

Jayanthi

.. Petitioner

vs

1.State of Tamil Nadu

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

2.The Commissioner of Police,

Greater Chennai,
Office of Commissioner of Police,
Vepery, Chennai -7.

3.The Superintendent of Prison,

Central Prison, Puzhal II, Chennai.

4.The Inspector of Police,

K-1 Sembium 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 Memo No.378/BCDFGISSSV/2022 passed by the 2nd respondent on 21.10.2022 on the file of the 2nd respondent and quash the same as illegal and consequently direct the respondents to produce petitioner's son Madhavan @ Maadu, son of Mohan @ Kattan Mohan, aged about 22 years, before this Court, who is now detained in Central Prison, Puzhal II, Chennai and set him at liberty.



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For Petitioner : Mr.A.Elumalai
For Respondents : Mr.E.Raj Thilak,
Additional Public Prosecutor

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 21.10.2022 bearing reference No.378/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 the detenu is a 'Goonda' within the meaning of Section 2(f) of Act 14



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3. There are three adverse cases. The ground case which constitutes substantial part of substratum of the impugned detention order is Crime No.570 of 2022 on the file of K-1 Sembium Police Station for the alleged offence 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.A.Elumalai, learned counsel on record for petitioner and Mr.E.Raj Thilak, learned State Additional Public Prosecutor for all respondents are before us.

5. When the captioned HCP was taken up, it was brought to our notice that the co-accused in the ground case was also clamped with a similar preventive detention order and the same was challenged by the co-accused vide HCP No.2550 of 2022 and the same was allowed by this Court in and by an order dated 05.06.2023. A scanned reproduction of the same is as follows:



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H.C.P.No.3556 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.06.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN
THILAKAVADI

H.C.P.No.2550 of 2022

Palaniyandmal
W/o.Azhaguraj

.. Petitioner/mother of Detenu

Vs.

- 1.The Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George,
Chennai - 600 009.
- 2.The Commissioner of Police,
Chennai City.
- 3.The Superintendent,
Central Prison-II,
Puzhal, Chennai.
- 4.The Inspector of Police (Law & Order),
K-1, Sembium Police Station,
Chennai.

.. Respondents



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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 21.10.2022 in No.380/BCDFG1SSSV/2022 against the petitioner's son Thiru.Karthik @ Pieska Karthik, Male aged about 32 years son of Azhaguraj, who is confined at Central Prison, Puzhal-II, 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.A.Venkateswara Babu
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 mother of detenu assailing a 'preventive detention order dated 21.10.2022 bearing reference No.380/BCDFG1SSSV/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.



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H.C.P.No. 3330 of 2022

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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.570 of 2022 on the file of K-1, Sembium Police Station for an alleged offence 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.A.Venkateswara Babu, learned counsel 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. Multiple points have been urged in the HCP support affidavit but in the hearing Mr.A.Venkateswara Babu, learned counsel appearing for petitioner predicated his campaign against impugned preventive detention order on one point and the same finds favour with us. Therefore, we shall discuss and give dispositive reasoning on that one point without dilating on other points urged in support affidavit. Learned counsel took us through the grounds of impugned preventive detention order and drew our attention to a portion of the same, which reads as follows:

'... Thiru.Karthik @ Pieska Karthik, Thiru.Senthilkumar and Thiru.Mohan @ Kattan Mohan before the learned Court of Vth Metropolitan Magistrate, Egmore, Chennai - 600 008, on 15.09.2022 the said Court sent the accused to the Judicial custody till 29.09.2022 and they were lodged at Central Prison, Puzhal, Chennai as remand prisoners. Their remand period was further extended periodically till 27.10.2022.'

6. Adverting to the above portion of the impugned preventive detention order grounds learned counsel submitted that in the grounds booklet served on the detenu, more particularly at page No.127 - Remand



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Order dated 15.09.2022, i.e., remand till 29.09.2022 and page No.133 - Remand Extension Order dated 13.10.2022, i.e., remand extension upto 27.10.2022 have been furnished but in this chain the Remand Extension for the period from 30.09.2022 to 12.10.2022 has not been furnished. This Bench had the benefit of perusing the grounds booklet served on the petitioner and there is no reason to disagree with the learned counsel for petitioner. To put it with specificity, the point that is urged by the learned counsel is, the remand extension post 29.09.2022, i.e., remand extension period from 30.09.2022 to 12.10.2022 has not just been noticed but categorically adverted to by the detaining authority in the preventive detention order grounds, but the same has not been furnished to the detenu.

7. Learned Additional Public Prosecutor also had the benefit of perusing the grounds booklet served on the detenu. There cannot be any contestation that Remand Extension Order post 29.09.2022 has not been furnished to the detenu. As this matter turns heavily on records, learned Additional Public Prosecutor really does not have much of a say.



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8. In the light of the narrative, discussion and dispositive reasoning set out supra, we have no difficulty in holding that the rights of the detenu to make an effective representation, which is a constitutional safeguard ingrained in Clause (5) of Article 22 of the Constitution of India, has been impaired. This means that the impugned preventive detention order deserves to be dislodged.

9. Ergo, the sequelur is, captioned HCP is allowed. Impugned detention order dated 21.10.2022 bearing reference No.380/BCDP/GISSSV/2022 made by the second respondent is set aside and the detenu Thiru.Karthik @ Pieska Karthik, aged 32 years, son of Thiru.Azhaguraj, now detained in Central Prison, Puzhal, Chennai is directed to be set at liberty forthwith unless required in connection with any other case's. There shall be no order as to costs.

(M.S.,J.) (K.G.T.J.)
05.06.2023
(3/3)

Index : Yes
Speaking order
Neutral Citation : Yes
rsi

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

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6. There is no dispute that the point available for the detenu in HCP No.2550 of 2022 is available to the detenu in this case also.

7. In the light of the aforementioned stated position, we are reminded of the age old adage 'Sauce to Goose is sauce to Gander too'. Therefore, we have no difficulty in saying that the impugned detention order in the captioned HCP also deserves to be dislodged.

8. Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 21.10.2022 bearing reference No.378/BCDFGISSSV/2022 made by the second respondent is set aside and the detenu Thiru.Madhavan @ Maadu, aged 22 years, son of Thiru.Mohan @ Kattan Mohan, 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.) (R.S.V.,J.)
13.06.2023

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

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



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To
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- 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 Commissioner of Police,
Vepery, Chennai -7.
- 3.The Superintendent of Prison,
Central Prison, Puzhal II, Chennai.
- 4.The Inspector of Police,
K-1 Sembium Police Station,
Chennai.
- 5.The Public Prosecutor
High Court, Madras.



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**M.SUNDAR, J.,
and
R.SAKTHIVEL , J.,**

mmi

H.C.P.No.2520 of 2022

13.06.2023