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H.C.P.No.2537 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.06.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN
THILAKAVADI

H.C.P.No.2537 of 2022

K.Dinesh

S/o.Kovindasamy

.. Petitioner/husband of Detenu

Vs.

1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai - 600 009.

2.The Commissioner of Police,
Greater Chennai,Vepery,
Chennai – 600 007.

3.The Inspector of Police,
Central Crime Branch I,
Job Rocket Wing-28, Vepery,
Chennai – 600 007.

4.The Superintendent of Prison,
Special Prison for Women,
Puzhal, 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 10.11.2022 in Memo No.413/BCDFGISSSV/2022 against the petitioner's wife Nadeshwari, wife of Suresh @ Dinesh, aged about 46 years, who is confined at Special Prison for Women, Puzhal, Chennai and set aside the same and direct the respondents to produce the detenu before this Court and set her at liberty.

For Petitioner : Mr.V.Paarthiban

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 husband of detenu assailing a 'preventive detention order dated 10.11.2022 bearing reference 413/BCDFGISSSV/2022' [hereinafter 'impugned detention order' for the sake of convenience and brevity]. To be noted, third 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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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 one adverse case and one ground case. The ground case which constitutes substantial part of substratum of the impugned detention order is Crime No.361 of 2020 on the file of Job Racket Wing, Chennai Central Crime Branch-I for alleged offences under Sections 406, 465, 468 and 420 read with 34 and 109 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. Mr.V.Paarthiban, 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.

5. Though several grounds have been raised in the support affidavit qua captioned HCP, Mr.V.Paarthiban, learned counsel for petitioner projected his argument on two grounds in the hearing and the two grounds are as follows:

(i) Live and proximate link between the grounds of detention and purpose of detention has snapped. This has been articulated in paragraph 8 of the support affidavit and the same reads as follows:

'8. The detenu was arrested by the police on 19.06.2020. 06.10.2022 and, the detention order was passed on 10.11.2022. There was a delay of more than a month to pass the detention order and the said delay in passing the order of detention will shows that there was necessity to pass the preventive order against the detenu.'

[to be noted, in paragraph 8 extracted above, it appears that there is typographical error. It is informed that the date of arrest is 06.10.2022.]



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(ii) As regards imminent possibility of detenu being enlarged on bail, the detaining authority has proceeded on the basis that the sponsoring authority has stated that the relatives of the detenu are taking steps to take her out on bail but this is not supported by any adequate material.

6. No counter affidavit has been filed by the State but in the hearing learned Additional Public Prosecutor submitted to the contrary and his submissions are as follows:

(i) Substantial time was consumed in collection of papers and making of the impugned preventive detention order;

(ii) There is a Section 161(3) Cr.P.C. statement from the husband of the detenu and a Special Report from the sponsoring authority dated 09.11.2022 at page Nos.615 and 617 of the grounds booklet and this is the basis for subjective satisfaction qua imminent possibility of detenu being enlarged on bail.



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7. We carefully considered both the aforementioned points.

8. As regards the first point, as already alluded to supra no counter affidavit has been filed but the submission of learned Additional Public Prosecutor does not cut ice with us as it should be demonstrated that live and proximate link between the grounds of detention and purpose of detention had not snapped. The principle laid down in this regard is articulated in *Banik's* case [*Sushanta Kumar Banik Vs. State of Tripura & others reported in 2022 LiveLaw (SC) 813 : 2022 SCC OnLine SC 1333*] which has been respectfully followed by this Court in *Gomathi Vs. The Principal Secretary to Government and others* reported vide Neutral Citation of Madras High Court being *2023/MHC/334, Sadik Basha Yusuf Vs. The State of Tamil Nadu and others* reported vide Neutral Citation of Madras High Court being *2023/MHC/733, Sangeetha Vs. The Secretary to the Government and others* reported vide Neutral Citation of Madras High Court being *2023:MHC:1110, N.Anitha Vs. The Secretary to Government and others* reported vide Neutral Citation of Madras High Court being *2023:MHC:1159* and a series of other orders in HCP cases. In the case on hand, we find that the delay is unexplained and on that ground we sustain the



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argument of the petitioner.

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9. Though one point will suffice for interfering with the impugned preventive detention order, as the second point has also been canvassed before us, we deem it appropriate to set out our discussion and dispositive reasoning qua second point also.

10. As regards second point, we had the benefit of perusing Section 161(3) Cr.P.C. statement (to be noted Section 161(3) Cr.P.C. statement of the detenu's spouse) as well as Special Report from the sponsoring authority which has been signed by the sponsoring authority on 09.11.2022. As regards Section 161(3) Cr.P.C. statement, there is no date in the same and therefore we feel that it really does not buttress the subjective satisfaction. As regards the Special Report, we find that there is no mention about steps being taken for filing bail application on behalf of the detenu, the Special Report also does not in any manner buttress the subjective satisfaction that has been arrived at by the detaining authority and therefore it cannot be the basis for subjective satisfaction. In this view of the matter, we have no hesitation in saying that the second point also enures to the benefit of the detenu in the



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petitioner's campaign against impugned preventive detention order.

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11. In the light of the narrative, discussion and dispositive reasoning thus far, the sequitur that follows is, impugned preventive detention order deserves to be dislodged.

12. Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 10.11.2022 bearing reference 413/BCDFGISSSV/2022 made by the second respondent is set aside and the detenu Tmt.Nadeshwari, aged 46 years, wife of Thiru.Suresh @ Dinesh, now detained in Special Prison for Women, 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.)

12.06.2023

Index : Yes/No

Speaking order / Non speaking order

Neutral Citation : Yes/No

rsi

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



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To

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Chennai – 600 007.
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High Court, Madras.



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

rsi

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