



H.C.P.No.2527 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.06.2023

Coram

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

H.C.P.No.2527 of 2022

Selvi

.. Petitioner

VS

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

2.The Commissioner of Police,
Salem City, Salem.

3.The Superintendent,
Central Prison, Salem, Salem District.

4.The Inspector of Police,
Annadanapatty Police Station,
Salem District.

.. Respondents

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 2nd respondent herein concerned in C.M.P. No. 137/Goonda/Salem City/2022 dated 31.10.2022 quashing the same and directing the respondents herein to produce the body and person of the detenu by name Babu @ Kuruvi Babu, son of Chinnakannu, aged about 48 years, before this Court and set him at liberty, now detained in Central Prison, Salem, Salem District.



H.C.P.No.2527 of 2022

For Petitioner : Mr.S.Senthivel
for Mr.R.Rajan

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 wife of the detenu assailing a 'preventive detention order dated 31.10.2022 bearing reference C.M.P.No.137/Goonda/Salem City/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



H.C.P.No.2527 of 2022

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.471 of 2022 on the file of Annadanapatty Police Station for alleged offences under Sections 341, 392 r/w 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.

4. Mr.S.Senthilvel, learned counsel representing 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. In the support affidavit, several points have been urged but learned counsel for petitioner posited his argument on one point and that one point turns on imminent possibility of detenu being enlarged on bail and the subjective satisfaction arrived at by the detaining authority in this regard.



H.C.P.No.2527 of 2022

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6. A perusal of the case file and the grounds booklet brings to light that the detaining authority has relied on a bail order dated 02.02.2019 in C.M.P.No.346 of 2019 vide Crime No.693 of 2018 on the file of Kannankurici Police Station (*Vijayakumar's case*) to arrive at subjective satisfaction in this regard. A careful perusal of *Vijayakumar's case* brings to light that it does not pertain to offence of wrongful restraint under Section 339 IPC. To be noted, punishment for wrongful restraint is prescribed vide Section 341 IPC. The ground case qua imminent possibility as captured in paragraph 4 of the grounds of detention makes it clear that it is primarily a case of wrongful restraint for which the punishment is under Section 341 IPC. Therefore, comparison of the ground case with bail order in *Vijayakumar's case* to arrive at subjective satisfaction qua imminent possibility of detenu being enlarged on bail is clearly a flawed exercise. As the comparison is flawed, the impugned preventive detention order deserves to be dislodged.

7. Apropos, the sequitur is, captioned HCP is allowed. Impugned detention order dated 31.10.2022 bearing reference C.M.P.No.137/Goonda/Salem City/2022 made by the second respondent is set aside and the detenu Thiru.Babu @ Kuruvi Babu,



H.C.P.No.2527 of 2022

aged 48 years, son of Thiru.Chinnakannu, 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.)
06.06.2023

Index : Yes / No
Neutral Citation : Yes / No
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P.S: Registry to forthwith communicate this order to Jail authorities in Central Prison, Salem.

To

- 1.The Principal Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George, Secretariat, Chennai – 9.
- 2.The Commissioner of Police,
Salem City, Salem.
- 3.The Superintendent,
Central Prison,Salem, Salem District.
- 4.The Inspector of Police,
Annadanapatty Police Station,
Salem District.
- 5.The Public Prosecutor
High Court, Madras.



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H.C.P.No.2527 of 2022

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

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H.C.P.No.2527 of 2022

06.06.2023