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H.C.P.No.2550 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

Palaniyammal
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



H.C.P.No.2550 of 2022

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/BCDFGISSSV/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/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.



H.C.P.No.2550 of 2022

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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WEB COPY

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



H.C.P.No.2550 of 2022

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.



H.C.P.No.2550 of 2022

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 sequitur is, captioned HCP is allowed. Impugned detention order dated 21.10.2022 bearing reference No.380/BCDFGISSSV/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.



H.C.P.No.2550 of 2022

To

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- 3.The Superintendent,
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K-1, Sembium Police Station,
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- 5.The Public Prosecutor
High Court, Madras.



WEB COPY



H.C.P.No.2550 of 2022

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

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H.C.P.No.2550 of 2022

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(3/3)