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H.C.P.No.2630 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.2630 of 2022

Chinnaponnu

W/o.Raja Vanniyan

.. Petitioner/mother of Detenu

Vs.

1.The State of Tamil Nadu,
Rep. by Secretary of State,
Prohibition and Excise Department,
St. George Fort,
Chennai - 600 009.

2.The Commissioner of Police,
Poonamallee High Road,
Vepery, Chennai – 600 007.

3.The Superintendent of Prison,
Central Prison, Puzhal,
Chennai – 600 006.

4.The Inspector of Police,
J-6, Thiruvanmiyur Police Station,
Chennai – 600 041.

.. 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 relating to the detention order dated 03.11.2022 made in detention order Memo No.402/BCDFGISSSV/2022 passed by the second respondent herein and quash the same and direct the respondents to produce the body or person of the petitioner's son Rajadurai, son of Raja Vanniyan, aged about 27 years branded as Goonda and now confined in Central Prison, Puzhal, Chennai before this Court and set him at liberty forthwith

For Petitioner : Mr.C.Mohan Raj

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 03.11.2022 bearing reference No.402/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.



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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 are two adverse cases and one ground case. The ground case which constitutes substantial part of substratum of the impugned detention order is Crime No.312 of 2022 on the file of J-6, Thiruvannamiyur Police Station for alleged offences under Sections 294(b), 392, 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.



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4. Mr.C.Mohan Raj, 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. Notwithstanding very many averments in the support affidavit qua captioned HCP, learned counsel for petitioner predicated his campaign against the impugned preventive detention order on one point in the hearing and that one point turns on subjective satisfaction arrived at by the detaining authority qua imminent possibility of detenu being enlarged on bail.

6. Adverting to paragraph 4 of the impugned preventive detention order it was argued that one **Balaji's** case being CrI.M.P.No.10485 of 2021 on the file of I Additional Sessions Judge's Court, Chennai was relied on for arriving at subjective satisfaction. It was submitted that Balaji's case is dissimilar.

7. Learned Additional Public Prosecutor submitted that the offences in ground case and Balaji's case are broadly comparable.



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8. We had the benefit of perusing Balaji's case bail order which has been furnished to the detenu as part of the grounds booklet at Pages 573 to 577 of the grounds booklet. A careful perusal of Balaji's case bail order, more particularly, paragraph 5 thereof brings to light that Balaji's case was one where there was no previous case qua the accused and the bail order was owing to then prevailing Covid-19 situation. These two aspects are absent in the case on hand, as in the case on hand even according to the detaining authority there are two adverse cases as set out in the impugned preventive detention order. Covid-19 situation in legal parlance is from 15.03.2020 to 28.02.2022 i.e., the period for which Hon'ble Supreme Court in *Suo Motu* Writ Petition (C) No.3 of 2020 *inter alia* extended time across the Board. Looking from any perspective, we have no difficulty in accepting the submission of learned counsel for petitioner that Balaji's case is dissimilar qua ground case. This means subjective satisfaction arrived at by the detaining authority qua imminent possibility of detenu being enlarged on bail is clearly impaired. The sequitur is, impugned preventive detention order deserves to be dislodged.



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9. Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 03.11.2022 bearing reference No.402/BCDFGISSSV/2022 made by the second respondent is set aside and the detenu Thiru.Rajadurai, aged 27 years, son of Thiru.Raja Vanniyan, 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.)
12.06.2023

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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To

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- 1.The Secretary of State,
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- 2.The Commissioner of Police,
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- 3.The Superintendent of Prison,
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- 4.The Inspector of Police,
J-6, Thiruvanmiyur Police Station,
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- 5.The Public Prosecutor
High Court, Madras.



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

rsi

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