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H.C.P.No.2579 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.06.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE Mrs.JUSTICE K.GOVINDARAJAN
THILAKAVADI

H.C.P.No.2579 of 2022

Ramamurthy
S/o.Krishnan

.. Petitioner /
Detenu's father

Vs.

State rep. by

1. 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

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

... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus calling upon the production of the records relating to the detention order dated 03.11.2022 made in detention order Memo No.405/BCDFGISSSV/2022 passed by the 2nd respondent herein quash the same and direct the respondents to produce the body or person of the petitioner's son Pandian, son of Ramamurthy, aged 27 years branded as Goonda and now confined at Central Prison, Puzhal, Chennai before this Court and set him at liberty forthwith.

For Petitioner	:	Mr.C.Mohanraj
For Respondents	:	Mr.R.Muniyapparaj Additional Public Prosecutor Assisted by Mr.Sylvester John Advocate

ORDER

**[Order of the Court was made by K.GOVINDARAJAN
THILAKAVADI, J.,]**

Captioned 'Habeas Corpus Petition' ['HCP' for the sake of brevity] has been filed by the mother of detenu assailing a 'preventive detention order dated 03.11.2022 bearing reference BCDFGISSSV No.405/2022' [hereinafter 'impugned detention order' for the sake of convenience and brevity]. To be noted, fourth respondent is the sponsoring authority and



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second respondent is the detaining authority as impugned detention order has been made by the 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 of 1982.

3. There are two adverse cases and one ground case. The ground case which constitutes substantial part of substratum of the impugned preventive detention order is Crime No.311 of 2022 on the file of J-6, Thiruvannamiyur Police Station for alleged offences under Sections 302 and 120(B) of 'Indian Penal Code, 1860 (Act 45 of 1860)' ['IPC' for brevity]. 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.Mohanraj learned counsel on record for petitioner and Mr.R.Muniyapparaj, learned State Additional Public Prosecutor, assisted by Mr.Sylvester John, Advocate, for all respondents are before us.

5. Learned counsel for petitioner submits that the detenu was produced before the Judicial Magistrate on PT warrant on 19.09.2022 and was remanded to judicial custody on the same day in the ground case but the impugned detention order has been made only on 03.11.2022. Therefore, the live and proximate link between the grounds of detention and purpose of detention has snapped.

6. Mr.R.Muniyapparaj, learned State Additional Public Prosecutor, submits to the contrary by saying that materials had to be collected /collated and time was consumed in this exercise. Considering the facts and circumstances of the case and nature of ground case, we find that this explanation of learned Prosecutor is unacceptable.

7. Therefore, applying the principles laid down by Apex Court in catena of decisions starting from ***Bhawarlal Ganeshmalji v. State of Tamil***



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Nadu reported in (1979) 1 SCC 465 to *Sushanta Kumar Banik's* case

[*Sushanta Kumar Banik Vs. State of Tripura & others* reported in 2022

LiveLaw (SC) 813 : 2022 SCC OnLine SC 1333], the impugned preventive detention order is liable to be quashed.

8. Before concluding, we also remind ourselves that preventive detention is not a punishment and HCP is a high prerogative writ.

9. In the result, captioned HCP is allowed and the impugned detention order dated 03.11.2022 bearing reference BCDFGISSSV No.405/2022 made by the second respondent is set aside and the detenu Thiru.Pandian, aged 27 years, son of Thiru.Ramamurthy 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 :No

Non-Speaking order

Neutral Citation : No

gpa

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



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M.SUNDAR, J.,
and

K.GOVINDARAJAN THILAKAVADI, J.,

gpa

To

1. The Secretary of State
Prohibition and Excise Department
St. George Fort
Chennai – 600 009
2. The Commissioner of Police
Poonamallee High Road
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5. The Public Prosecutor
Madras High Court, Chennai

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