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HCP No.2553 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.06.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

H.C.P.No.2553 of 2022

Nandhini
W/o.Arun

.. Petitioner

Vs.

1. The State of Tamil Nadu
Rep. by its Secretary to Government
Home, Prohibition and Excise Department
Fort St.George, Chennai-600 009.
2. The Commissioner of Police
Tambaram City
Tambaram, Chennai.
3. The Inspector of Police
T-14, Pallikaranai Police Station
Chennai District.
4. Superintendent of Prison
Office of the Superintendent of Prisons
Central Prison, Puzhal
Chennai.

..Respondents

Petition filed under Article 226 of the Constitution of India praying for
issuance of a writ of habeas corpus to call for the records of the detention



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made in Memo No.BCDFGISSSV No.182/2022 dated 31.10.2022 passed by the Commissioner of Police, Tambaram City, Tambaram, Chennai, the second respondent herein and set aside the same and direct the respondents to produce the petitioner's husband Mr.Arun, S/o.Shanmugam, male, aged about 31 years, now confined at Central Prison, Puzhal, Chennai, before this Hon'ble Court and set him at liberty.

For Petitioner : Mr.M.Prabakar
representing Mr.M.Kabilan
For Respondents : Mr.E.Raj Thilak
Additional Public Prosecutor

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 the wife of detenu assailing a 'preventive detention order dated 31.10.2022 bearing reference BCDFGISSSV No.182/2022' [hereinafter 'impugned preventive 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 the impugned preventive detention order has been made by second respondent.

2. Impugned preventive detention order has been made under 'The Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Cyber law



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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 'Sexual Offender' within the meaning of Section 2(ggg) of Act 14 of 1982.

3. There are no adverse cases. This solitary case which is the sole substratum of the impugned preventive detention order is Crime No.993 of 2022 on the file of T-14 Pallikaranai Police Station for alleged offences under Sections 451, 294(b), 323, 342, 376, 392 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 preventive detention order, it is not necessary to delve into the factual matrix or be detained further by facts.

4. Mr.M.Prabakar, learned counsel representing counsel on record for petitioner and Mr.E.Raj Thilak, learned State Additional Public Prosecutor for all respondents are before us.



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5. In the support affidavit qua captioned HCP several points have been urged / raised but in the hearing, Mr.M.Prabakar, learned counsel for petitioner predicated his campaign against the impugned preventive detention order on one point and that one point pertains to subjective satisfaction arrived at by the Detaining Authority qua imminent possibility of the detenu being enlarged on bail.

6. Learned counsel drew the attention of this Court to paragraph No.3 of grounds of impugned preventive detention order and most relevant portion reads as follows:

'3) I am aware that Thiru.Arun is in remand in T-14 Pallikaranai Police Station Crime No.993/2022 and he has not moved any bail application for T-14 Pallikaranai Police Station Crime No.993/2022 so far. The sponsoring authority has stated that Thiru.Arun's relatives are taking action to take him out on bail in T-14 Pallikaranai Police Station Crime No.993/2022 by filing bail application before the appropriate Court. Hence, I infer that there is a real possibility of his coming out on bail in T-14 Pallikaranai Police Station Crime No.993/2022 case by filing bail application before the appropriate Court.....'



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7. Learned counsel submitted that the aforementioned subjective satisfaction is impaired as it is not on the basis of any credible material. Responding to the aforementioned argument, learned Prosecutor submitted that there is a statement from detenu's mother (Punniyam, wife of Shanmugam) being statement under Section 161(3) of 'The Code of Criminal Procedure, 1973 (2 of 1974)' [hereinafter 'Cr.PC' for the sake of brevity and clarity] and a special report from jurisdictional Inspector of Police.

8. In considering the rival submissions, we had the benefit of perusing the aforementioned 161(3) Cr.PC statement and special report from jurisdictional Inspector of Police. As regards Section 161(3) Cr.PC statement said to be from mother of the detenu, the date on which it was recorded has not been mentioned. This means that it is not clear as to whether the statement was given before making of impugned preventive detention order or after making of impugned preventive detention order. Therefore, the benefit of doubt has to be given to detenu and we are of the view that this cannot be considered as credible material for arriving at aforementioned subjective satisfaction. As regards special report, we find that in the report



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itself, it does not contain the date, but it has been signed by jurisdictional Inspector of Police on 29.10.2022. We find that the jurisdictional Inspector of Police is third respondent before us and he is the Sponsoring Authority qua impugned preventive detention order. Therefore, possibility of this material being seen as self serving material cannot be ruled out in this regard. Considering the facts and circumstance of the case on hand, we deem it appropriate to give the benefit of doubt to detenu.

9. In the light of the narrative, discussion and dispositive reasoning supra, we are of the view that the impugned preventive detention order deserves to be dislodged.

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

11. Apropos, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 31.10.2022 bearing reference BCDFGISSSV No.182/2022 made by the second respondent is set aside and the detenu Thiru.Arun, aged 31 years, son of Thiru.Shanmugam, is directed to be set at



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liberty forthwith, if not required in connection with any other case / cases.

There shall be no order as to costs.

(M.S.,J.) (R.S.V.,J.)
20.06.2023

Index : Yes

Speaking

Neutral Citation : Yes

mk

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

To

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Rep. by its Secretary to Government
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