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H.C.P.No.2565 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.04.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

and

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

H.C.P.No.2565 of 2022

Baby

W/o.Mariadoss

.. Petitioner/Sister of Detenu

Vs.

1.State of Tamil Nadu,

Rep. by its Secretary to Government,

Home, Prohibition and Excise Department,

Secretariat,

Chennai – 600 009.

2.The Commissioner of Police,

Tambaram City,

Chennai.

3.The Inspector of Police,

T-13, Chitlapakkam Police Station,

Chennai.

4.The Superintendent,

Central Prison, Puzhal,

Chennai.

.. 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 entire records relating to petitioner's brother detention under Tamil Nadu Act 14 of 1982 vide detention order dated 21.10.2022 on the file of the second respondent herein made in proceedings BCDFGISSSV No.169/2022 and quash the same as illegal and consequently direct the respondents herein to produce the petitioner's brother namely, Moses, aged 31 years, son of Kiruba Rao, before this Court and set him at liberty, now petitioner's brother detained at Central Prison, Puzhal, Chennai – 600 066.

For Petitioner : Mr.M.Mohamed Saifulla
for Mr.C.C.Chellappan
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 sister of detenu assailing a 'preventive detention order dated 21.10.2022 bearing reference BCDFGISSSV No.169/2022' [hereinafter 'impugned detention order' for the sake of convenience and brevity]. To be



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noted, third 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 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.408 of 2022 on the file of T-13, Chitlapakkam Police Station for alleged offences under Sections 342 and 302 of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the



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

5. In the support affidavit qua captioned HCP very many grounds have been raised/urged but in the hearing Mr.M.Mohamed Saifulla, learned counsel representing the counsel on record for the petitioner submitted that subjective satisfaction arrived at by the detaining authority qua imminent possibility of detenu being enlarged on bail is clearly flawed. In support of his submission learned counsel drew our attention to a portion of paragraph 4 of the impugned preventive detention order, which reads as follows:



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'I am also aware that Thiru.Moses who was remanded in T-13, Chitlapakkam P.S. Cr.No.408/2022 has not filed any bail petition in T-13, Chitlapakkam P.S. Cr.No.408/2022. However, the sponsoring authority has stated that it is learnt that Thiru.Moses's relatives are taking steps to take him out on bail in T-13, Chitlapakkam P.S. Cr.No.408/2022 by filing a bail application in appropriate Court. Further, it is pertinent to note that in a similar case, registered at Chitlapakkam P.S. Cr.No.1395/2017 u/s.302 IPC bail was granted to the accused Sathish by the Hon'ble High Court of Madras in Crl.O.P.No.2027/2018 on 11.07.2018. Hence, I infer that it is very likely of his coming out on bail in T-13, Chitlapakkam Police Station Cr.No.408 of 2022 since in the similarly placed cases, bails were granted by the Courts after a lapse of time.'

6. Adverting to aforementioned portion of the impugned preventive detention order it was submitted that bail order in **Sathish** case, which has been used as bench mark to arrive at subjective satisfaction, has not been furnished to the detenu as part of the grounds booklet.

7. We had the benefit of perusing grounds booklet supplied to the detenu and we find that the submission of the learned counsel is correct.



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Learned counsel also very fairly pointed out that only bail condition relaxation order in **Sathish** case being order dated 11.07.2018 made in Crl.O.P.No.2027 of 2018 has been furnished at page Nos.319 and 321. This does not serve the purpose.

8. As the aforementioned matter turns on records before us, learned Additional Public Prosecutor really does not have much of a say.

9. We have no difficulty in coming to the conclusion that the subjective satisfaction arrived at by the detaining authority qua imminent possibility of detenu being enlarged on bail is clearly a point which cannot be raised by the detenu in his representation though the right to make an effective representation against a preventive detention order is a constitutional safeguard enshrined in Article 22(5) of the Constitution of India. The sequitur is impugned preventive detention order deserves to be dislodged.



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10. Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 21.10.2022 bearing reference BCDFGISSSV No.169/2022 made by the second respondent is set aside and the detenu Thiru.Moses, aged 31 years, son of Thiru.Kiruba Rao, 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.)

(M.N.K.,J.)

24.04.2023

Index : Yes

Speaking

Neutral Citation : Yes

rsi

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



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M.SUNDAR, J.

and

M.NIRMAL KUMAR, J.

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To

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Chennai – 600 009.

2.The Commissioner of Police,
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