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H.C.P.No.2589 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.2589 of 2022

Vijay
S/o.Kabilan

.. Petitioner /
Brother of the detenu

Vs.

1. State of Tamil Nadu
Rep. By the Secretary
Home, Prohibition and Excise Department
Fort St.George
Chennai – 600 009
2. The Commissioner of Police
Greater Chennai Police Commissioner
The Commissioner Office
Vepery, Chennai-7
3. The Superintendent of Police
Central Prison, Puzhal
Chennai - 66

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4. The Inspector of Police
V6, Kolathur Police Station
Chennai

... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus calling for the entire records relating to the detention order in Memo No.BCDFGISSSV No.374 of 2022 dated 21.10.2022 passed by the second respondent under the Tamil Nadu Act 14 of 1982 and set aside the same and direct the respondents to produce the petitioner's brother Ajay @ Lasar, son of Kabilan, the detenu, now confined in Central Prison, Puzhal, Chennai before this Court and set the petitioner's brother at liberty.

For Petitioner	:	Mr.K.Gunasekaran
For Respondents	:	Mr.R.Muniyapparaj Additional Public Prosecutor Assisted by Mr.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 the brother of detenu assailing a 'preventive detention order dated 21.10.2022 bearing reference Memo No.374/BCDFGISSSV/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 five adverse cases and one ground case. The ground case which constitutes substantial part of substratum of the impugned preventive detention order is Crime No.401 of 2022 on the file of V-6, Kolathur Police Station for alleged offences under Sections 341, 294(b), 323, 336, 427, 392, 397 and 506 (ii) 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.

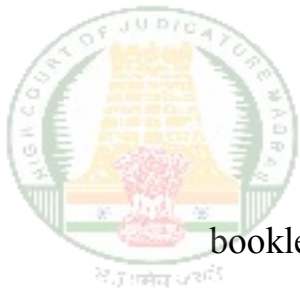


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4. Mr.K.Gunasekaran, learned counsel on record for petitioner and Mr.R.Muniyapparaj, learned State Additional Public Prosecutor, assisted by Mr.Sylvester John, Advocate, for all respondents are before us.

5. In the support affidavit qua captioned HCP, very many points have been urged but in the hearing, learned counsel for petitioner predicated his submission on one point and that one point has found favour with us. To be noted, the lone point on which learned counsel predicated his campaign against the impugned preventive detention order turns on subjective satisfaction arrived at by the Detaining Authority qua imminent possibility of the detenu being enlarged on bail.

6. Adverting to the detention order, learned counsel submitted that the aforementioned subjective satisfaction has been arrived at by the Detaining Authority by comparing the ground case with a bail order dated 27.10.2021 in CrI.M.P.No.19198 of 2021 vide Crime No.527 of 2021 on the file of R-6, Kumaran Nagar Police Station ('Ashok's case' for convenience). Ashok's case bail order has been furnished to the detenu as part of the grounds



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booklet and we had the benefit of perusing the same. A careful perusal of

Ashok's case and more particularly paragraph 5 thereat, makes it clear that

Ashok having been involved only in one previous case has weighed in the mind of the learned Sessions Judge in gravitating towards exercising discretion in favour of grant of bail. In complete contradistinction, in the case on hand there are as many as five adverse cases even according to the impugned preventive detention order.

7. Learned Prosecutor in his contra submission submitted that Ashok's case and the ground case are comparable as the offences are broadly akin to each other. We are unable to agree as the parameters and determinants for the discretionary relief of grant of bail have to be compared in a manner that does not lead to comparison of two dissimilar cases. In the case on hand, we find Ashok's case and grounds case are dissimilar owing to reasons delineated supra. This means that the aforementioned subjective satisfaction arrived at by the Detaining Authority is impaired and therefore the impugned preventive detention order deserves to be dislodged.



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8. Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 21.10.2022 bearing reference 374/BCDFGISSSV /2022 made by the second respondent is set aside and the detenu Thiru.Ajay Lasar, aged 22 years, son of Thiru.Kabilan 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 : Yes

Speaking order

Neutral Citation : Yes

gpa

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



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To

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1. The Secretary
Home, Prohibition and Excise Department
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4. The Inspector of Police
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Chennai
5. The Public Prosecutor
Madras High Court, Chennai



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

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