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H.C.P.No.2594 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.2594 of 2022

Jothika .. Petitioner /
W/o.Neelesh @ Neelesh Kumar wife of the detenu

Vs.

1. State of Tamil Nadu
Rep. By The Additional Chief Secretary to Government
Home, Prohibition and Excise Department
Fort.St.George, Chennai – 600 009
 2. The Commissioner of Police
The Greater Chennai City
Vepery, Chennai – 600 007
 3. The Superintendent of Prison
Central Prison, Puzhal
Chennai – 600 066
 4. The Inspector of Police
K-3, Aminjikarai Police Station
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 calling for the entire records relating to the detention order in Memo No.424/BCDFGISSSV/2022 dated 16.11.2022 passed by the 2nd respondent under the Tamilnadu Act 14 of 1982 and set aside the same and direct the respondents to produce the petitioner's husband Neelesh @ Neelesh Kumar, son of Mohan, aged about 23 years, the detenu, now confined in Central Prison, Puzhal, Chennai before this Court and set him at liberty.

For Petitioner : Mr.S.Senthilvel
for Mr,K.Bommuraj

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 wife of detenu assailing a 'preventive detention order dated 16.11.2022 bearing reference Memo No.424/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 the 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 six adverse cases and one ground case. The ground case which constitutes substantial part of substratum of the impugned preventive detention order is Crime No.432 of 2022 on the file of K-3, Aminjikarai Police Station for alleged offences under Sections 147, 148, 341, 294(b), 323, 392 read with 397, 336, 427 and 506 (ii) of 'Indian Penal Code, 1860 (Act 45 of 1860)' ['IPC' for brevity] read with Section 25(1-A) of Arms Act, 1959. 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.S.Senthilvel, learned counsel representing the counsel on record for petitioner and Mr.R.Muniyapparaj, learned State Additional Public



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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 14.11.2022 in CrI.M.P.No.21483 of 2022 vide Crime No.432 of 2022 on the file of K-3 Aminjikarai Police Station ('Central Raja @ Vinoth Raja case' for convenience). Central Raja @ Vinoth Raja's case bail order has been furnished to the detenu as part of the grounds booklet and we had the



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benefit of perusing the same. A careful perusal of Central Raja @ Vinoth Raja's case and more particularly paragraph 4 thereat, makes it clear that Central Raja @ Vinoth Raja having been involved only in one murder 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 six adverse cases even according to the impugned preventive detention order.

7. Learned Prosecutor in his contra submission submitted that Central Raja @ Vinoth Raja'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 Central Raja @ Vinoth Raja's case and grounds case are dissimilar for 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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WEB COPY 8. Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 16.11.2022 bearing reference 424/BCDFGISSSV/2022 made by the second respondent is set aside and the detenu Thiru.Neelesh @ Neeleshkumar, aged 23 years, son of Thiru.Mohan 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 Additional Chief Secretary to Government
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3. The Superintendent of Prison
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4. The Inspector of Police
K-3, Aminjikarai Police Station
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5. The Public Prosecutor
Madras High Court, Chennai



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

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