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H.C.P.No.2617 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.06.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

H.C.P.No.2617 of 2022

K.Jayanthi
W/o.Kutty

.. Petitioner

Vs.

1. State of Tamil Nadu
Rep. by its Secretary to Government
Home, Prohibition and Excise Department
Fort St.George
Chennai-9.
2. The Commissioner of Police
Tambaram City
Sholinganallur
Chennai-600 119.
3. The Superintendent of Prison
Central Prison
Puzhal, Chennai.
4. The Inspector of Police
T-9, Maraimalai Nagar Police Station
Chengalpattu District.

..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 records relating to the order of detention passed by the 2nd respondent in BCDFGISSSV No.159/2022 dated 13.10.2022, quash the same and direct the respondents to produce the body of the detenu Siva @ Cutting Siva (aged about 32 years) son of Kutty (now lodged at Central Prison, Puzhal) before this Hon'ble Court and set him at liberty.

For Petitioner : Mr.V.Elangovan
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 mother of the detenu assailing a 'preventive detention order dated 13.10.2022 bearing reference BCDFGISSSV No.159/2022' [hereinafter 'impugned preventive 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 the impugned preventive detention order has been made by second respondent.



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2. Impugned preventive 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. This solitary case which is the sole substratum of the impugned preventive detention order is Crime No.243 of 2022 on the file of T-9, Maraimalai Nagar Police Station for alleged offence 'Man Missing' and subsequently, altered into Sections 147, 148, 120B, 363, 294(b), 302 and 201 of 'Indian Penal Code, 1860 (Act 45 of 1860)' ['IPC' for brevity]. 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.



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

5. In the support affidavit qua captioned HCP, several grounds have been raised but in the hearing Mr.V.Elangovan, learned counsel on record for petitioner predicated his argument on one point and that one point turns on subjective satisfaction arrived at by the Detaining Authority as regards imminent possibility of the detenu being enlarged on bail. Most relevant portion of grounds of impugned preventive detention order in this regard is contained in paragraph No.4 of the impugned preventive detention order and the same reads as follows:

'4..... Further, it is pertinent to note that in a similar case, registered at Kundrathur P.S. Cr.No.825/2021 u/s. Man Missing @ 364, 302, 201, 147, 148, 294(b), 212 IPC, bail was granted to the accused Hussain Sherif @ Sherif Hussain by the Judicial Magistrate Court, Sriperumbudur vide Crl.M.P.No.81/2022 on 28.01.2022. Hence, I infer that it is very likely of his coming out on bail in T-9, Maraimalai Nagar Police Station Cr.No.243/2022 since in the similarly placed cases, bails were granted by the Courts



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after a lapse of time.....'

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6. Learned counsel drew our attention to bail order in ***Hussain Sherif*** case and submitted that it is a default bail under Section 167(2) of 'The Code of Criminal Procedure, 1973 (2 of 1974)' [hereinafter 'Cr.PC' for the sake of brevity and clarity] and therefore, subjective satisfaction arrived at by the Detaining Authority is impaired.

7. Learned Prosecutor submitted that offences in ***Hussain Sherif*** case and ground case are broadly comparable but we are not inclined to accept the submission as there is little discretion (no discretion) for the learned Sessions Judge when it comes to default bail under Section 167(2) of Cr.PC. To put it differently, bail under Section 167(2) of Cr.PC operates in terms of arithmetics unlike a regular bail under Section 439 of Cr.PC which operates on discretion vested in learned Sessions Judge. We also remind ourselves that the imminent possibility of the detenu being enlarged on bail aspect of a preventive detention order is not qua time but qua probability.



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8. In the light of the narrative, discussion and dispositive reasoning thus far, we have no hesitation in saying that comparison of ground case and bail order in ***Hussain Sherif*** case which is a default bail is clearly flawed and therefore, impugned preventive detention order deserves to be dislodged.

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

10. Apropos, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 13.10.2022 bearing reference BCDFGISSSV No.159/2022 made by the second respondent is set aside and the detenu Thiru.Siva @ Cutting Siva, male, aged 32 years, Son of Kutty 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.)

(R.S.V.,J.)

14.06.2023

Index : Yes

Speaking

Neutral Citation : Yes

mk

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

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M.SUNDAR, J.,
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R.SAKTHIVEL, J.,

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