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HCP No.2633 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.07.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

H.C.P.No.2633 of 2022

Mary
W/o.Vedachalam

.. Petitioner

Vs.

1. The State of Tamil Nadu
Rep. by its Secretary to Govt.
Home Prohibition and Excise Department
Fort St.George, Chennai-9.
2. The Commissioner of Police
Greater Chennai, Vepery
Chennai-600 007.
3. The Superintendent of Prison
Central Prison-I
Puzhal, Chennai-66.
4. Assistant Commissioner of Police
Bank Fraud Investigation Wing,
CCB-1, Greater Chennai Police,
Vepery, Chennai-600 007.

..Respondents

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 leading to



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the detention of petitioner's son Chandrabose, son of Vedachalam, male aged about 39 years the detenu herein presently lodged in Central Prison-I, Puzhal at Chennai, who has been detained under Act 14/82 as a "Goonda" vide detention order dated 28.11.2022 made in Memo No.442/BCDFGISSSV/2022 by the 2nd respondent herein and quash the same and consequently, direct the respondents herein to produce the body and person of said detenu before this Hon'ble Court and thereafter set him at liberty from the Central Prison, Puzhal, Chennai.

For Petitioner	:	Mr.N.Chandrasekharan Senior Counsel
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 28.11.2022 bearing reference No.442/BCDFGISSSV/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.242 of 2022 on the file of Bank Fraud Investigation Wing, Central Crime Branch-I, Greater Chennai Police, Vepery, Chennai, for alleged offences under Sections 420, 465, 467, 468, 471 read with 120(B) of 'Indian Penal Code, 1860 (Act 45 of 1860)' ['IPC' for the sake of 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.N.Chandrasekharan, learned Senior counsel appearing on behalf of 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 several points have been raised / urged but in the final hearing Mr.N.Chandrasekharan, learned Senior counsel appearing on behalf of counsel on record for petitioner projected his argument 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 being impaired.

6. Elaborating on the aforementioned submission, learned Senior counsel drew our attention to a portion of paragraph No.4 of the grounds of impugned preventive detention order and that portion reads as follows:

'4. I am aware that Thiru Chandrabose is in remand in Central Crime Branch-I Cr.No.242/2022 and lodged at Central Prison, Puzhal, Chennai as a remand prisoner. He has moved a bail application for Central Crime Branch-I Cr.No.242/2022 before the Court of Special Metropolitan Magistrate for the exclusive trial of CCB and CB CID cases, Egmore, Chennai in CrI.M.P.No.38211/2022 and the same is pending. Further in the



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similar case registered in Central Crime Branch Cr.No.139/2020 u/s 120(B), 420, 465, 467, 468, 471 IPC, the bail was granted by the Hon'ble High Court, Madras in Crl.OP.No.2341/2022. Hence, I infer that it is very likely of his coming out on bail in Central Crime Branch-I Cr.No.242/2022 case, since, in similarly placed case, the bail was granted by the Courts after a lapse of time.....'

7. The bail order granted by a Hon'ble single Judge of this Court vide Crl.O.P.No.2341 of 2021 has been furnished to the detenu as part of grounds booklet at Page No.677 to 685. We had the benefit of perusing this bail order. A careful perusal of this bail order, more particularly, paragraph Nos.4 to 6 thereat makes it clear that in that case, SARFAESI proceedings was already initiated [to be noted, SARFAESI stands for 'the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002'] but that is not the case in the ground case which is the solitary case on the basis of which the impugned preventive detention order has been made. As regards subjective satisfaction qua imminent possibility of the detenu being enlarged on bail, determinants / parameters for grant of bail should also be comparable. In this view of the matter, we find that the ground case and bail order vide Crl.O.P.No.2341/2021 of this Court are not really comparable as the ground situation is vastly different and one of the



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determinants for grant of bail by this Court is SARFAESI proceedings. This means that the subjective satisfaction is impaired. Further sequitur is impugned preventive detention order deserves to be dislodged.

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

9. Apropos, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 28.11.2022 bearing reference No.442/BCDFGISSSV/2022 made by the second respondent is set aside and the detenu Thiru.Chandrabose, male, aged 39 years, son of Vedhachalam, 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.)
03.07.2023

Index : Yes /No

Speaking /Non-speaking order

Neutral Citation : Yes / No

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



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To

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Rep. by its Secretary to Govt.
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5. The Public Prosecutor
High Court, Madras.



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

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