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H.C.P.No.2647 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.06.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN
THILAKAVADI

H.C.P.No.2647 of 2022

Durairaj
S/o.Jeeva

.. Petitioner/father of Detenu

Vs.

1.The Chief Secretary to the Government,
Government of Tamil Nadu,
Home, Prohibition and Excise Department,
Secretariat, Fort St. George,
Chennai - 600 009.

2.The Commissioner of Police, Greater Chennai,
Office of Commissioner of Police,
Vepery, Chennai – 600 007.

3.The Superintendent,
Central Prison, Puzhal
Chennai – 600 066.

4.The Inspector of Police (L & O),
D-1 Triplicane 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 to call for the entire records connected with the order of the 2nd respondent herein in BCDFGISSSV No.431/2022 dated 22.11.2022 against my son, Pallu Balaji @ Balaji, aged 24 years, confined at Central Prison, Puzhal, Chennai and set aside the same, consequently, directing the respondents herein to produce the body and person of the detenu before this Court and set him at liberty forthwith.

For Petitioner : Ms.T.Monicka
for Mr.V.M.Venkataramana

For Respondents : Mr.R.Muniyapparaj
Additional Public Prosecutor
assisted by
Mr.M.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 father of detenu assailing a 'preventive detention order dated 22.11.2022 bearing reference BCDFGISSSV No.431/2022' [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 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 'Drug Offender' within the meaning of Section 2(e) of Act 14 of 1982.

3. There is one adverse case and one ground case. The ground case which constitutes substantial part of substratum of the impugned detention order is Crime No.611 of 2022 on the file of D-1 Triplicane Police Station for alleged offences under Sections 8(c) read with 20(b)(ii)(B) of 'The Narcotic Drugs and Psychotropic Substances Act, 1985' [hereinafter 'NDPS Act' for the 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.



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4. Ms.T.Monicka, learned counsel representing counsel on record for petitioner and Mr.R.Muniyapparaj, learned State Additional Public Prosecutor assisted by Mr.M.Sylvester John, learned counsel for all respondents are before us.

5. Though very many points have been raised in the support affidavit, the lone point that falls for consideration is one that turns on subjective satisfaction arrived at by the detaining authority qua imminent possibility of detenu being enlarged on bail. The detaining authority has relied on an order dated 10.11.2022 in CrI.M.P.No.5472 of 2022 on the file of Principal Special Judge's Court under EC & NDPS Act, Chennai (Varadhan's bail order) to arrive at subjective satisfaction.

6. We had the benefit of perusing **Varadhan's** case bail order which is at page Nos.137 and 138 of the grounds booklet. A careful perusal of Varadhan's case bail order brings to light that there was no previous case against the accused, whereas in the case on hand, even according to the impugned preventive detention order there is atleast one adverse case. To this



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extent the comparison is such that it impairs the subjective satisfaction qua imminent possibility of detenu being enlarged on bail. We remind ourselves that imminent possibility is not qua time and that it is qua probability. In this view of the matter, we interfere with the impugned preventive detention order on the ground that subjective satisfaction qua imminent possibility of detenu being enlarged on bail is impaired.

7. Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 22.11.2022 bearing reference BCDFGISSSV No.431/2022 made by the second respondent is set aside and the detenu Thiru.Pallu Balaji @ Balaji, aged 24 years, son of Thiru.Durairaj, 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.) (K.G.T.,J.)
12.06.2023

Index : Yes
Speaking order
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
K.GOVINDARAJAN THILAKAVADI, J.

rsi

To

- 1.The Chief Secretary to the Government,
Government of Tamil Nadu,
Home, Prohibition and Excise Department,
Secretariat, Fort St. George,
Chennai - 600 009.
- 2.The Commissioner of Police, Greater Chennai,
Office of Commissioner of Police,
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- 3.The Superintendent,
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- 4.The Inspector of Police (L & O),
D-1 Triplicane Police Station,
Chennai.
- 5.The Public Prosecutor
High Court, Madras.

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