



H.C.P.No.2649 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 01.03.2023

Coram

The Hon'ble Mr. Justice **M.SUNDAR**
and
The Hon'ble Mr. Justice **M.NIRMAL KUMAR**

H.C.P.No.2649 of 2022

Chitra
W/o.Murugan

... Petitioner/mother of the detenu

-VS-

1.State of Tamil Nadu represented
by Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George, Chennai – 600 009.

2.The Commissioner of Police,
Greater Chennai.

3.The Superintendent of Prison,
Central Prison, Puzhal,
Chennai.

4.State Rep by Inspector of Police,
E-3, Teynampet Police Station,
Chennai.

... Respondents

Prayer: Habeas Corpus Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus calling for the records of the 2nd respondent pertaining to the order made in No.107/BCDFGISSSV/2022 dated 07.05.2022 in detaining the detenu under the Tamilnadu Act 14/1982



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as a Goonda and quash the same and direct the respondents to produce the detenu, namely Dineshkumar @ Theenja Dinesh, son of Murugan aged 25 years who is detained at the Central Prison Puzhal, Chennai, before this Court and set him at liberty.

For Petitioner .. Ms.S.Valarmathi
For Respondents .. Mr.R.Muniyapparaj
Additional Public Prosecutor
assisted by
Mr.M.Sylvester John

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 detenu assailing a 'preventive detention order dated 07.05.2022 bearing reference No.107/BCDFGISSSV/2022' (hereinafter 'impugned detention order' for the sake of convenience). To be noted, fourth respondent is the Sponsoring Authority.

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-



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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 three adverse cases and one ground case. The ground case which is the substratum of the impugned detention order is Crime No.110/2022 on the file of E-3 Teynampet Police Station for alleged offences under Sections 341, 294(b), 323, 307 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.

4. Ms.S.Valarmathi, learned counsel for petitioner and Mr.R.Muniyapparaj, learned State Additional Public Prosecutor assisted by Mr.M.Sylvester John for all four respondents are before us.

5. Notwithstanding very many averments in the support affidavit, Ms.S.Valarmathi, learned counsel on record for petitioner submitted that



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subjective satisfaction arrived at by the detaining authority to say that there is imminent possibility of detenu being enlarged on bail is impaired as such subjective satisfaction has been arrived at *inter alia* by comparing bail granted in CrI.M.P.No.6184 of 2018 qua Crime No.145/2018 on the file of F-2 Egmore Police Station. A careful perusal of this case shows that this pertains to an alleged offence under Section 302 I.P.C., whereas ground case which is the substratum of impugned detention order is an alleged offence under Section 307 I.P.C. Therefore, we find that the case referred to in impugned detention order is really not a similar case, it is dissimilar and it tantamounts to comparing Apples and Oranges. Therefore, the argument of the learned Additional Public Prosecutor that it is a broad comparison does not weigh with us, as the two offences are so vastly different and we are unable to persuade ourselves to believe that the two cases are not dissimilar.

6. Ergo, the sequitur is, H.C.P. No.2649 of 2022 is allowed, impugned detention order dated 07.05.2022 bearing reference No.107/BCDFGISSSV/2022 made by the second respondent is set aside and detenu Mr.Dineshkumar, male, aged 25 years, son of Mr.Murugan, now



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detained in Central Prison, Puzhal, Chennai is directed to be set at liberty
forthwith unless required in connection with any other case/s.

(M.S,J.) (M.N.K.,J.)
01.03.2023

Index : Yes / No
Speaking / Non-speaking
Neutral Citation : Yes / No
rsi

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

To

- 1.The Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George, Chennai – 600 009.
- 2.The Commissioner of Police,
Greater Chennai.
- 3.The Superintendent of Prison,
Central Prison Puzhal,
Chennai.
- 4.The Inspector of Police,
E-3, Teynampet Police Station,
Chennai.
- 5.The Public Prosecutor,
Madras High Court,
Chennai – 104.



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and
M.NIRMAL KUMAR, J.

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