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H.C.P.No.2665 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.2665 of 2022

Srimathi
W/o.Balaji

.. Petitioner/wife of Detenu

Vs.

1.The State of Tamil Nadu,
Represented by Secretary to Government,
Prohibition and Excise Department,
Fort St. George,
Chennai - 600 009.

2.The Commissioner of Police,
Avadi City,
Office of the Commissioner of Police,
(Goondas Section),
Avadi, Chennai – 600 054.

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

4.The Inspector of Police,
E-5, Sholavaram Police Station,
Chennai – 600 067.

.. 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 detention order dated 30.11.2022 passed by the second respondent in BCDFGISSSV No.166 of 2022 and quash the same and direct the respondents herein to produce the petitioner's husband, Balaji @ David, S/o.Govindan, aged 31 years, who is presently undergoing detention in the Central Prison, Puzhal, Chennai before this Court and set him at liberty forthwith.

For Petitioner : Mr.P.Chandra Sekar

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 wife of detenu assailing a 'preventive detention order dated 30.11.2022 bearing reference 166/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 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 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.897 of 2022 on the file of E-5 Sholavaram Police Station for alleged offences under Sections 147, 148, 341, 294(b), 336, 427, 392, 397 and 506(ii) of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' 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. Mr.P.Chandra Sekar, learned counsel 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 26.05.2021 in CrI.M.P.No.10485 of 2021 on the file of I Additional Sessions Judge's Court, Chennai (Balaji's bail order) to arrive at subjective satisfaction.

6. We had the benefit of perusing **Balaji's** case bail order which is at page Nos.270 to 272 of the grounds booklet. A careful perusal of Balaji'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 extent the comparison is such that it impairs the subjective satisfaction qua imminent possibility of detenu being enlarged on bail. We remind ourselves that



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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 30.11.2022 bearing reference 166/BCDFGISSSV/2022 made by the second respondent is set aside and the detenu Thiru.Balaji @ David, aged 31 years, son of Thiru.Govindan, 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/No
Speaking order / Non speaking order
Neutral Citation : Yes/No
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 Secretary to Government,
Prohibition and Excise Department,
Fort St. George,
Chennai - 600 009.
- 2.The Commissioner of Police,
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Office of the Commissioner of Police,
(Goondas Section),
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E-5, Sholavaram Police Station,
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- 5.The Public Prosecutor
High Court, Madras.

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