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H.C.P.No.2669 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.06.2023

Coram

THE HONOURABLE MR.JUSTICE **M.SUNDAR**
and
THE HONOURABLE MR.JUSTICE **R.SAKTHIVEL**

H.C.P.No.2669 of 2022

Vignesh Kumar

.. Petitioner

VS

1.The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai – 9.

2.The Commissioner of Police,
Greater Chennai.

3.The Superintendent,
Special Prison for Women,
Puzhal, Chennai.

4.The Inspector of Police,
CCB Team I, EDF – I, Chennai.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus to call for the records in connection with the order of detention passed by the second respondent dated 30.11.2022 in Memo No.444/BCDFGISSSV/2022 against the petitioner's sister Ramalakshmi, female, aged about 43 years, W/o.Jayaseelan, who is confined at Special Prison for Women, Puzhal, Chennai and set aside the same and direct the respondents to produce the detainee before this Court and set her at liberty.



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For Petitioner : Mr.Ilayaraja Kandasamy
for Mr.N.Vijayaraj
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 brother of detainee assailing a 'preventive detention order dated 30.11.2022 bearing reference No.444/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.

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 detainee is a 'Goonda' within the meaning of Section 2(f) of Act 14 of 1982.



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3. There is one adverse case. The ground case which constitutes substantial part of substratum of the impugned detention order is Central Crime Branch – I Crime No.221 of 2022 for the alleged offences under Sections 406, 420 r/w 34 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.

4. Mr.Ilayaraja Kandasamy, learned counsel representing the 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 urged/raised but in the final hearing today, Mr.Ilayaraja Kandasamy, learned counsel representing the counsel on record for petitioner predicated his campaign against the impugned preventive detention order on the point that subjective satisfaction arrived at by the detaining authority qua imminent possibility of detenue being enlarged on bail is impaired. Learned



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counsel drew the attention of this Court to the grounds of detention and submitted that the grounds of detention says that the special report from the sponsoring authority (fourth respondent) has been relied on and the same is at pages 531 and 533 of the grounds booklet. Learned counsel pointed out that the special report of the sponsoring authority is self-serving.

6. Be that as it may, more important aspect of the matter is, the special report does not contain date. Even the signature of the sponsoring authority does not bear a date. This means that it is not clear as to whether the special report is prior to the date of impugned preventive detention order or after the date of the impugned preventive detention order. To be noted, date of impugned preventive detention order is 30.11.2022 and the same was served on the detainee on 01.12.2022 but the grounds have been served on the detainee only on 03.12.2022. Therefore, the benefit of doubt has to be given to the detainee. We remind ourselves that imminent possibility of detainee being enlarged on bail is qua probability (not qua time) and viewed in this perspective if the benefit of doubt as regards the date of special report is given to the detainee, it follows as a sequitur that the subjective satisfaction arrived at by the detaining authority qua imminent



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possibility of detenue being enlarged on bail is impaired. Further sequitur is, impugned preventive detention order deserves to be dislodged.

7. Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 30.11.2022 bearing reference No.444/BCDFGISSSV/2022 made by the second respondent is set aside and the detenue Tmt.Ramalakshmi, aged 43 years, wife of Thiru.Jayaseelan, 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.)
26.06.2023

Index : Yes
Neutral Citation : Yes
mmi

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

To

- 1.The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai – 9.
- 2.The Commissioner of Police,
Greater Chennai.
- 3.The Superintendent,
Special Prison for Women,
Puzhal, Chennai.



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4.The Inspector of Police,
CCB Team I, EDF – I, Chennai.

5.The Public Prosecutor,
High Court, Madras.

**M.SUNDAR, J.,
and**



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