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H.C.P.No.2690 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.06.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE Mr.JUSTICE R.SAKTHIVEL

H.C.P.No.2690 of 2022

B.Bhakkiayavathi
W/o.Babu

.. Petitioner

Vs.

1. The Additional Chief Secretary to Government
Home, Prohibition & Excise Department
Fort St.George, Chennai – 600 009
2. The Commissioner of Police
Tambaram City Police Commissionerate
Sholinganallur, Chennai – 600 119
3. The Superintendent of Prison
Central Prison
Puzhal, Chennai – 600 066
4. The Inspector of Police
T-14, Pallikaranai Police Station
Pallikaranai, Chennai – 600 100

... Respondents



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Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus calling for the records of the Commissioner of Police, Tambaram City Police, the second respondent herein in connection with the detention order vide Memo No.162/BCDFGISSSV/2022 dated 14.10.2022 and quash the same and further direct the respondents to produce the detenu Thiru.Janakiraman @ Jani, son of Babu, who is detained in Central Prison, Puzhal, Chennai before this Court and set him at liberty forthwith.

For Petitioner : Mr.S.Senthilvel
for Mr.D.Gopikrishnan

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 the mother of the detenu assailing a 'preventive detention order dated 14.10.2022 bearing reference BCDFGISSSV No.162/2022' [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 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 preventive detention order is Crime No.908 of 2022 on the file of T-14, Pallikaranai Police Station for alleged offences under Sections 294(b), 336, 397, 427 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.



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4. Mr.S.Senthilvel, 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 grounds have been raised/urged but in the hearing, Mr.S.Senthilvel, learned counsel representing the counsel on record for petitioner predicated his campaign against the impugned preventive detention order on one point and that one point turns on imminent possibility of detenu being enlarged on bail and subjective satisfaction arrived at by the detaining authority in this regard.

6. Adverting to the impugned preventive detention order, learned counsel submitted that the aforementioned subjective satisfaction has been arrived at by the detaining authority by relying on Arun's case bail order being bail order dated 18.10.2019 in CrI.M.P.No.21605 of 2019 vide Crime No.275 of 2019 on the file of G-3 Kilpauk Police Station.



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7. We had the benefit of perusing the Arun's case bail order which was supplied to the detenu as part of grounds booklet. A perusal of Arun's case bail order brings to light that Arun's case is one where the Prosecutor has submitted that the petitioner has no bad antecedents whereas in the case on hand, even according to the impugned preventive detention order, there is one adverse case. To be noted, paragraph 5 of Arun's case bail order is of relevance and the most relevant portion of paragraph 5 reads as follows:

'5.Learned CPP does not raise any serious objection. No previous case is reported as against the petitioner.....'

8. Besides this, we also find that Arun's case is one for Sections 341 of IPC (Punishment for wrongful restraint) and Section 323 of IPC (Punishment for voluntarily causing hurt). Therefore relying on Arun's case bail order to arrive at aforementioned subjective satisfaction is clearly a flawed exercise. This flawed exercise means that the impugned preventive detention order deserves to be dislodged.

9. Ergo, the sequitur is captioned HCP is allowed. Impugned preventive detention order dated 14.10.2022 bearing reference



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BCDFGISSSV No.162 of 2022 made by the second respondent is set aside

and the detenu Thiru.Janakiraman @ Jani, aged 23 years, son of Thiru.Babu, 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.)

19.06.2023

Index : Yes

Speaking order

Neutral Citation : Yes

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



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To

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5. The Public Prosecutor
Madras High Court, Chennai



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