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H.C.P.No.2680 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.06.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE Mr.JUSTICE R.SAKTHIVEL

H.C.P.No.2680 of 2022

Revathi

Wife of Mari @ Korukkupet Mari

.. Petitioner /
wife of the detenu

Vs.

1. State of Tamil Nadu
Rep. By its Secretary, Home
Prohibition & Excise Department
Fort St.George, Chennai – 600 009
2. The Commissioner of Police
Greater Chennai Police Commissioner
The Commissioner Office
Vepery, Chennai – 7
3. The Superintendent of Police
Central Prison
Puzhal, Chennai - 66
4. The Inspector of Police
P1, Pulianthope Police Station
Chennai

... Respondents

Petition filed under Article 226 of the Constitution of India praying

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for issuance of a writ of habeas corpus calling for the entire records relating to the detention order in Memo BCDFGISSSV No.436/2022 dated 25.11.2022 passed by the second respondent under the Tamil Nadu Act 14 of 1982 and set aside the same and direct the respondents to produce the petitioner's husband Mari @ Korukkupet Mari, son of Babu, the detenu, confined in Central Prison, Puzhal, Chennai before this Court and set the petitioner's husband at liberty.

For Petitioner : Mr.N.Naresh

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 wife of the detenu assailing a 'preventive detention order dated 25.11.2022 bearing reference 436/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,



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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 are six adverse cases and one ground case. The ground case which constitutes substantial part of substratum of the impugned preventive detention order is Crime No.616 of 2022 on the file of P-1, Pulianthope Police Station for alleged offence under Sections 147, 148, 324, 307 and 506(ii) of 'Indian Penal Code, 1860 (Act 45 of 1860)' ['IPC' for brevity] altered to Sections 147, 148, 324, 302 and 506(ii) of IPC. 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.N.Naresh, learned counsel on record for petitioner and Mr.E.Raj Thilak, learned State Additional Public Prosecutor for all respondents are before us.



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5. In the support affidavit qua captioned HCP, several grounds have been raised but in the final hearing, Mr.N.Naresh, learned counsel predicated his campaign against the impugned preventive detention order on one point and that one point turns on subjective satisfaction arrived at by the Detaining Authority as regards imminent possibility of detenu being enlarged on bail. Learned counsel drew our attention to relevant portion in the grounds of impugned preventive detention order and the same articulated in Paragraph 4 thereat reads as follows:

'4. I am aware that Thiru.Mari @Korukkupet Mari is in remand in P-1 Pulianthope Police Station in Crime No.616/2022 and he has not moved a bail application for P-1, Pulianthope Police Station in Crime No.616/2022. The sponsoring authority has stated that he came to understand that the relatives of Thiru Mari @Korukkupet Mari are taking action to take him out on bail in P-1 Pulianthope Police Station in Crime No.616/2022 by filing bail application before the appropriate Court. In a similar case registered u/s.147, 148, 449, 324, 302 IPC in R3 Ashok Nagar Police Station in Cr.No.59/2021, the bail was granted by the Principal Sessions Court, Chennai in CrI.MP.No.10485/2021....'



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6. Elaborating on the above submission, learned counsel submitted that in what according to detaining authority is a similar case, one Balaji and two others are petitioners and a perusal of Balaji's bail order which is at Pages 400 to 402 of the grounds booklet reveals that in Balaji's case, there was no previous case whereas in the case on hand even according to the impugned preventive detention order, there are five adverse cases. One other distinction highlighted by the learned counsel is, in Balaji's case, Covid-19 situation has been taken note of by the learned Sessions Judge in granting bail. Covid-19 situation in legal parlance is from 15.03.2020 to 28.02.2022 i.e., the period for which Hon'ble Supreme Court in *Suo Motu* Writ Petition (C) No.3 of 2020 *inter alia* extended time across the Board.

7. We had the benefit of perusing Balaji's case bail order, the relevant paragraph is paragraph 5 and the same reads as follows:

'5. The petitioners have been to custody for the past 75 days. No previous case reported as against the petitioners. Considering the duration of custody and stage of the case and existing Covid-19 situation, this Court is inclined to grant bail to the petitioners subject to condition.'



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8. Learned Prosecutor submitted to the contrary and learned Prosecutor's submission is, alleged offences / charge in Balaji's case and the ground case in the case on hand are broadly comparable but we are not inclined to accept this counter argument as the determinants and parameters which have weighed in the minds of the learned Sessions Judge for gravitating towards grant of bail which is a discretionary relief are completely different qua case on hand. This means that comparison of the case on hand with the Balaji's case bail order to arrive at subjective satisfaction that there is imminent possibility of the detenu being enlarged on bail is clearly flawed comparison which reminds one of the age old adage 'comparing Apples and Oranges'. We also remind ourselves that imminent possibility of being enlarged on bail is not qua time but qua probability. In this view of the matter, as the subjective satisfaction arrived at by the Detaining Authority is flawed, the impugned preventive detention order deserves to be dislodged is the sequitur..

9. Apropos, captioned HCP is allowed. Impugned preventive detention order dated 25.11.2022 bearing reference BCDFGISSSV No.436 of 2022 made by the second respondent is set aside and the detenu



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Thiru.Mari @ Korukkupet Mari, 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.)

14.06.2023

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

To

1. The Secretary, Home
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Fort St.George, Chennai – 600 009
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Greater Chennai Police Commissioner
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5. The Public Prosecutor
Madras High Court, Chennai

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and
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