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H.C.P.No.2688 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.06.2023

Coram

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

H.C.P.No.2688 of 2022

P.Manonmani

.. Petitioner

VS

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

2.The Commissioner of Police,
Office of the Commissioner of Police,
Avadi.

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

4.The Inspector of Police,
T-2 Ambattur Estate Police Station,
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 pertaining to the order of detention passed by the second respondent in his proceedings in No.172/BCDFGISSSV/2022 dated 02.12.2022 and quash the same as illegal and produce the detenu namely Arumugam @ Aru, S/o.Pandurangan, aged 28 years, as Goonda, now he is confined in Central Prison, Puzhal II, Chennai, before this Court and set him at liberty.



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H.C.P.No.2688 of 2022

For Petitioner : Mr.S.Lokesh
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 mother of the detenu assailing a 'preventive detention order dated 02.12.2022 bearing reference No.172/BCDFGISSSV/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.

2. Impugned preventive 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.



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WEB COPY

3. There are two adverse cases. The ground case which constitutes substantial part of substratum of the impugned preventive detention order is Crime No.370 of 2022 on the file of T-2 Ambattur Estate Police Station for the alleged offences under Sections 294(b), 323, 427, 324, 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 preventive detention order, it is not necessary to delve into the factual matrix or be detained further by facts.

4. Mr.S.Lokesh, learned 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.S.Lokesh, learned counsel for petitioner predicated his campaign against the impugned preventive detention order on the point that the subjective satisfaction arrived at by the detaining authority qua imminent possibility of detenu being enlarged on bail is impaired. In this regard, learned counsel drew our attention to a portion of



H.C.P.No.2688 of 2022

paragraph 4 of the grounds of impugned preventive detention order and that portion reads as follows: :

'4.Further, in a similar case, registered at F-2 Egmore P.S. Cr.No.145/2018 u/s. 341, 294(b), 323, 336, 427, 307 and 506(ii) IPC, the bail was granted to the accused Thiru.Stephen @ Stephenraj by the Court of Principal Sessions, Chennai in Crl.M.P.No.6184/2018. Hence, I infer that there is a real possibility of his coming out on bail in T-2 Ambattur Estate Police Station Crime Nos.364/2022, 368/2022 and 370/2022 cases by filing bail application before the appropriate court, since in a similar case, the bail was granted by the court after a lapse of time....'

6. Adverting to the aforementioned portion, learned counsel submitted that the bail order in Stephen @ Stephen Raj case has not been furnished to the detenu as part of the grounds booklet. The grounds booklet served on the detenu was placed before us.

7. In response to aforementioned argument, learned Prosecutor submitted that similar case bail order has been furnished as part of the booklet at pages 220 and 221. We had the benefit of perusing pages 220 and 221 but we find the same to be a bail order dated 01.02.2018 in the case of one Aravind in Crl.M.P.No.1759 of 2018 on the file of Principal Sessions Judge, Chennai. Therefore, similar case bail order referred to by the detaining authority in the grounds of impugned preventive detention order has not been



H.C.P.No.2688 of 2022

furnished to the detenu. This means that the right of the detenu to make an effective representation qua impugned preventive detention order is impaired. To be noted, this right of the detenu is a constitutional guarantee ingrained in Article 22(5) of the Constitution of India. As there is infraction of right of the detenu qua Article 22(5) of the Constitution of India, we have no hesitation in saying that the impugned preventive detention order deserves to be dislodged.

8. Ergo, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 02.12.2022 bearing reference No.172/BCDFGISSSV/2022 made by the second respondent is set aside and the detenu Thiru.Arumugam @ Aru, aged 28 years, son of Thiru.Pandurangan, 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.)
27.06.2023

Index : Yes
Neutral Citation : Yes
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P.S: Registry to forthwith communicate this order to Jail authorities in Central Prison, Puzhal, Chennai.



H.C.P.No.2688 of 2022

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To

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- 5.The Public Prosecutor,
High Court, Madras.



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**M.SUNDAR, J.,
and
R.SAKTHIVEL, J.,**

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