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H.C.P.No.2689 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.2689 of 2022

G.Punitha

.. Petitioner

vs

1.State of Tamil Nadu rep. By
The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai – 9.

2.The District Collector and District Magistrate,
O/o.The District Collector and District
Magistrate, Mayiladuthurai District,
Mayiladuthurai.

3.The Superintendent of Police,
Mayiladuthurai District,
Mayiladuthurai.

4.The Superintendent,
Central Prison, Tiruchirappalli.

5.The Inspector of Police,
Palaiyur Police Station,
Mayiladuthurai District.

.. Respondents

Petition filed under Article 226 of the Constitution of India
praying for issuance of a writ of habeas corpus to call for the entire
records in connection with the detention order passed in C.O.C.
No.59/2022 dated 09.12.2022 on the file of the second respondent



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herein and set aside the same as illegal and direct the respondents to produce the detenu Sudhakaran, S/o.Gopu, male, aged 26 years, who is detained in Central Prison, Tiruchirappalli before this Court and set him at liberty.

For Petitioner : Ms.S.Vasavi Sridevi
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 09.12.2022 bearing reference C.O.C.No.59/2022' [hereinafter 'impugned preventive detention order' for the sake of convenience and brevity]. To be noted, fifth respondent is the sponsoring authority and second respondent is the detaining authority as impugned preventive 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,



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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 'Bootlegger' within the meaning of Section 2(b) of Act 14 of 1982.

3. There are three adverse cases. The ground case which constitutes substantial part of substratum of the impugned preventive detention order is Crime No.305 of 2022 on the file of Palaiyur Police Station for the alleged offences under Sections 4(1)(aaa), 4(1)(i) r/w 4(1-A) of 'Tamil Nadu Prohibition Act, 1937' [hereinafter 'TNP Act' 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. Ms.S.Vasavi Sridevi, 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 affidavit filed in support of captioned HCP, several grounds have been raised but in the final hearing today, Ms.S.Vasavi Sridevi, learned counsel on record for petitioner predicated her campaign against the impugned preventive detention order on the point that subjective satisfaction (qua imminent possibility of detenu being enlarged on bail) arrived at by the detaining authority is impaired as it is in the abstract and it is not supported by any material. In this regard, learned counsel drew our attention to a portion of paragraph 6 of the grounds of impugned preventive detention order and the same reads as follows:

'6.....Further the accused Thiru.Sudhakaran, male, aged 26/2022, S/o Gopu has not moved any bail application sofar in Palaiyur Police Station Crime Number 305/2022. The sponsoring authority has stated that Tmt.Punitha, mother of the detenu Thiru.Sudhakaran, male, aged 26/2022, S/o Gopu is taking steps to take him out on bail by filing bail application for the grounds cse before the appropriate court.'

6. Learned counsel submitted that the aforementioned subjective satisfaction has been arrived at by the detaining authority by saying that detenu's mother is taking steps to take him out on



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bail after noting the obtaining position that no bail application has been moved by the detenu qua ground case until the date of impugned preventive detention order. The grounds booklet served on the detenu was placed before us and we had the benefit of perusing the same. No statement from mother of detenu or any other supporting material is available in the grounds booklet.

7. As the aforementioned point turns heavily on records placed before us and case file, learned Prosecutor really does not have much of a say.

8. As the subjective satisfaction arrived at by the detaining authority qua imminent possibility of detenu being enlarged on bail is impaired, we have no difficulty in saying that the impugned preventive detention order is vitiated and the same deserves to be dislodged.

9. Ergo, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 09.12.2022 bearing reference C.O.C.No.59/2022 made by the second respondent is set aside and the detenu Thiru.Sudhakaran, aged 26 years, son of Thiru.Gopu, is directed to be set at liberty forthwith, if not required



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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
mmi

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

To

- 1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai – 9.
- 2.The District Collector and District Magistrate,
O/o.The District Collector and District
Magistrate, Mayiladuthurai District,
Mayiladuthurai.
- 3.The Superintendent of Police,
Mayiladuthurai District,
Mayiladuthurai.
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- 5.The Inspector of Police,
Palaiyur Police Station,
Mayiladuthurai District.
- 6.The Public Prosecutor,
High Court, Madras.



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

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