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H.C.P.No.2672 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.06.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN
THILAKAVADI

H.C.P.No.2672 of 2022

Rajasekar @ Karate Raja
S/o.Krishnan

.. Petitioner/Detenu

Vs.

1.The State of Tamil Nadu,
Represented by its Secretary,
Department of Home, Prohibition and Excise,
Fort St. George,
Chennai - 600 009.

2.The Commissioner of Police,
Salem City,
Salem.

3.The Superintendent,
Central Prison, Salem
Salem District.

4.The Inspector of Police,
Azhagapuram Police Station,
Salem City,
Salem District.

.. Respondents



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Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus to call for the records made in C.M.P.No.155/Goonda/Salem City/2022 dated 29.11.2022 on the file of second respondent herein and quash the same as illegal and direct the respondents to produce the petitioner/detenu Rajasekar @ Karate Raja, son of Krishnan, 39 years, now confined at Central Prison, Salem before this Court and set him at liberty.

For Petitioner : Mr.A.Ramesh

For Respondents : Mr.R.Muniyapparaj
Additional Public Prosecutor
assisted by
Mr.M.Sylvester John, Advocate

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 detenu assailing a 'preventive detention order dated 29.11.2022 bearing reference C.M.P.No.155/Goonda/Salem City/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.



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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 are two adverse cases and one ground case. The ground case which constitutes substantial part of substratum of the impugned detention order is Crime No.692 of 2022 on the file of Azhagapuram Police Station for alleged offences under Sections 341, 392, 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 detention order, it is not necessary to delve into the factual matrix or be detained further by facts.



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4. Mr.A.Ramesh, learned counsel for petitioner and Mr.R.Muniyapparaj, learned State Additional Public Prosecutor assisted by Mr.M.Sylvester John, learned counsel for all respondents are before us.

5. Though very many points have been urged in the support affidavit, in the hearing learned counsel for petitioner predicated his campaign against impugned preventive detention order on one point and the same finds favour with us. In the impugned preventive detention order the detaining authority has relied on an order dated 02.02.2019 in C.M.P.No.346 of 2019 on the file of I Additional Sessions Judge's Court, Salem (**Vijayakumar's** bail order) to arrive at subjective satisfaction qua imminent possibility of detenu being enlarged on bail. A careful perusal of Vijayakumar's case which is at page No.157 brings to light that it is a case where there is no allegation of Section 341 of IPC i.e., 'Punishment for wrongful restraint'. We find that, absent this allegation / charge as between Vijayakumar's case and ground case makes a world of difference on the facts and circumstances of the case on hand. Therefore, subjective satisfaction is impaired. The sequitur is, impugned preventive detention order deserves to be dislodged.



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6. Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 29.11.2022 bearing reference C.M.P.No.155/Goonda/Salem City/2022 made by the second respondent is set aside and the detenu Thiru.Rajasekar @ Karate Raja, aged 39 years, son of Thiru.Krishnan, now detained in Central Prison, Salem is directed to be set at liberty forthwith unless required in connection with any other case/s. There shall be no order as to costs.

(M.S.,J.) (K.G.T.,J.)
12.06.2023

Index : Yes
Speaking order
Neutral Citation : Yes
rsi

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



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M.SUNDAR, J.
and
K.GOVINDARAJAN THILAKAVADI, J.

rsi

To

- 1.The Secretary,
Department of Home, Prohibition and Excise,
Fort St. George,
Chennai - 600 009.
- 2.The Commissioner of Police,
Salem City,
Salem.
- 3.The Superintendent,
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- 4.The Inspector of Police,
Azhagapuram Police Station,
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- 5.The Public Prosecutor
High Court, Madras.

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