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H.C.P.No.20 of 2023

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.20 of 2023

Arokiyarnary
Wife of Sagayaraj

.. Petitioner /
Mother of the detenu

Vs.

1. State of Tamil Nadu
Rep. By its Secretary to Government
Home, Prohibition & Excise Department
Fort St.George, Chennai – 600 009
2. The Commissioner of Police
Tambaram City
3. The Superintendent of Prison
Central Prison
Puzhal, Chennai - 66
4. State rep. By Inspector of Police
T-15 Kannagi Nagar Police Station
Chennai

... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus calling for the entire records of the 2nd respondent pertaining to the order made in No.191/BCDFGISSSV/2022

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dated 05.11.2022 in detaining the detenu under the Tamil Nadu Act 14/1982 as a Goonda and quash the same and direct the respondents to produce the detenu, namely Arul Oli, son of Sagayaraj, aged 23 years who is detained at Central Prison, Puzhal, Chennai before this Court and set him at liberty.

For Petitioner : Mr.S.Karthick
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 05.11.2022 bearing reference 191/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, Drug-offenders, Forest-offenders, Goondas, Immoral traffic offenders, Sand-



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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.370 of 2022 on the file of T-15, Kannagi Nagar Police Station for an alleged offence under Section 379 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.

4. Mr.S.Karthick, 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 raised/urged but in the final hearing Mr.S.Karthick, learned counsel for petitioner predicated his campaign against the impugned preventive detention order on one point, which turns on subjective satisfaction arrived



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at by the Detaining Authority qua imminent possibility of the detenu being enlarged on bail. This point urged by the learned counsel for petitioner cut ice with us and therefore, we refrain ourselves from examining the other points that have been urged in the support affidavit.

6. Reverting to the aforementioned point, learned counsel drew our attention to paragraph 4 of the grounds of impugned preventive detention order and the relevant portion thereat reads as follows:

'4. I am also aware that Thiru.Arul Oli was arrested in T-15 Kannagi Nagar Police Station Cr.Nos.368/2022, 369/2022 and 370/2022. He has not filed any bail application so far in T-15 Kannagi Nagar Police Station Cr.Nos.368/2022, 369/2022 and 370/2022. However, the sponsoring authority has stated that it is learnt that Thiru.Arul Oli's relatives are taking steps to take him out on bail in the above cases of T-15 Kannagi Nagar Police Station by filing a bail application in appropriate court. Further it is pertinent to note that in a similar case, registered at Kannagi Nagar P.S C No.185/2022 u/s.379 IPC, bail was granted to the accused Kesavan by the Judicial Magistrate Court II, Alandur in Crl.M.P.No.666/2022 on 24.05.2022....'

7. Elaborating on the above point, learned counsel submitted that the bail order in Kesavan's case which has been compared with the ground case



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to arrive at the aforementioned subjective satisfaction has not been furnished

to the detenu as part of the grounds booklet.

8. We had the benefit of perusing the grounds booklet served on the detenu and there is no reason to disagree with the learned counsel for the petitioner. However, learned Prosecutor placed before us the booklet available in the office of the first respondent. A perusal of the same shows that this Kesavan's case bail order dated 23.05.2022 has been annexed (without running page numbers in the grounds booklet) between pages 303 and 305 of the grounds booklet. Learned Prosecutor submitted that it is therefore an inadvertent error and it has not been done with any deliberate intention.

9. We have no difficulty in accepting this inadvertent error part of the submission but the question before us is, whether there is infraction of rights of the detenu and we find that there is certain infraction of rights of the detenu as regards making an effective representation which causes infraction of sanctus fundamental right ingrained in Article 22(5) of the Constitution of India vested in the detenu. To be noted, Article 22(5) talks about effective



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representation which a detenu can make qua impugned preventive detention order. The matter does not stop here. The reason is, a careful perusal of Kesavan's case bail order dated 23.05.2022 as available in the booklet in the office of the first respondent shows that Kesavan's case is one where bail has been granted *inter alia* taking into account the Covid-19 pandemic situation. As regards Covid-19 pandemic, the corona virus pandemic and consequent lock down, which is collectively referred to as 'Covid-19 situation' in legal parlance is for the period from 15.03.2020 to 28.02.2022 vide orders of Hon'ble Supreme Court in *Suo Motu* Writ Petition (C) No.3 of 2020. In this view of the matter also, we are convinced that comparison of the case on hand with Kesavan's case bail order to arrive at subjective satisfaction that there is imminent possibility of detenu being enlarged on bail is clearly a flawed exercise. We also remind ourselves that as regards the imminent possibility of the detenu being enlarged on bail in preventive detention matters it is not qua time but it is qua probability.

10. The sum sequitur of the narrative, discussion and dispositive reasoning thus far is, the impugned preventive detention order is impaired and deserves to be dislodged for reasons delineated supra.



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11. Ergo, the captioned HCP is allowed. Impugned preventive detention order dated 05.11.2022 bearing reference 191/BCDFGISSSV/2022 made by the second respondent is set aside and the detenu Thiru.Arul Oli, aged 23 years, son of Thiru.Sagayaraj, 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

gpa

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

To

1. The Secretary to Government
Home, Prohibition & Excise Department
Fort St.George, Chennai – 600 009
2. The Commissioner of Police
Tambaram City
3. The Superintendent of Prison
Central Prison, Puzhal, Chennai - 66
4. The Inspector of Police
T-15 Kannagi Nagar Police Station
Chennai
5. The Public Prosecutor
Madras High Court, Chennai

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