



WEB COPY



HCP No.1 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.06.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

H.C.P.No.1 of 2023

B.Gopi
S/o.Balu

.. Petitioner

Vs.

1. The Principal Secretary to Government
Home, Prohibition and Excise Dept.,
Secretariat
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
L & O, T-1, Tambaram Nagar 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 with the order of detention passed by the second respondent dated 05.12.2022 in Memo No.207/BCDFGISSSV/2022 against the petitioner' son G.Seshan, male, aged



HCP No.1 of 2023

21 years, son of Gopi, who is confined at Central Prison, Puzhal, Chennai and set aside the same and direct the respondents to produce the detenu before the Hon'ble Court and set him at liberty.

For Petitioner : Dr.S.Manoharan
representing Mr.S.Senthilvel
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 father of the detenu assailing a 'preventive detention order dated 05.12.2022 bearing reference BCDFGISSSV No.207/2022' [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 the 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, Cyber law offenders, Drug-offenders, Forest-offenders, Goondas, Immoral traffic offenders, Sand-offenders, Sexual-offenders, Slum-grabbers and Video



HCP No.1 of 2023

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 three adverse cases and one ground case. The ground case which constitutes substantial part of substratum of the impugned preventive detention order is Crime No.834 of 2022 on the file of T-1 Tambaram Police Station for an alleged offences under Sections 341, 294(b), 307 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. Dr.S.Manoharan, learned counsel representing the 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, very many points/grounds have been urged/raised but in the hearing, learned counsel for petitioner predicated his

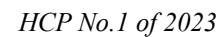


HCP No.1 of 2023

campaign against the impugned preventive detention order on one point and that one point turns on Section 8(1) of Act 14 of 1982, which reads as follows:

'8. Grounds of order of detention to be disclosed to persons affected by the order.- (1) When a person is detained in pursuance of a detention order, the authority making the order shall, as soon as may be, but not later than five days from the date of detention, communicate to him the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order to the State Government. '

6. Adverting to the aforementioned provision of law, learned counsel submitted that the date of impugned preventive detention order is 05.12.2022 and date of formal arrest pursuant to impugned preventive detention order is 06.12.2022 (served on the detenu on the next day i.e., on 06.12.2022) but the 'grounds on which the impugned preventive detention order has been made' was served on the detenu only on 12.12.2022. Learned counsel submits that this is a clear infraction of the statutory requirement qua Section 8(1) of Act 14 of 1982 and such infraction of a statutorily imperative requirement is fatal qua impugned preventive detention order is learned

[illegible]



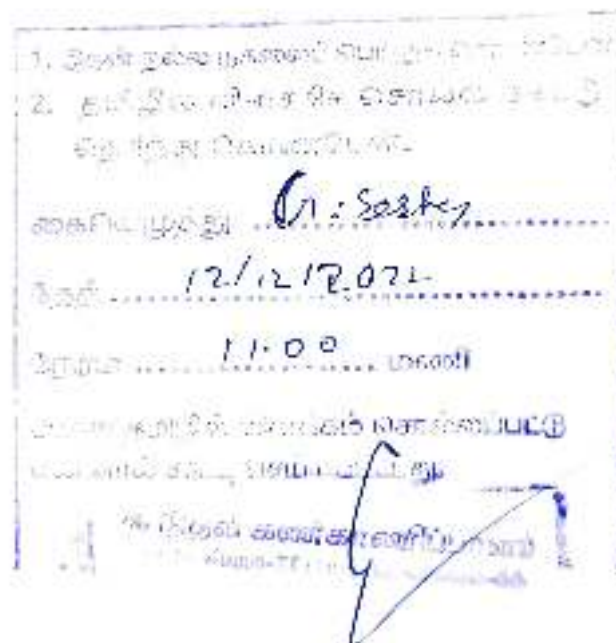
WEB COPY



HCP No.1 of 2023



Similarly, a typical page in the grounds of detention containing date regarding date of supply of same to detenu is as follows:





HCP No.1 of 2023

WEB COPY

7. We remind ourselves that dealing with infraction of Section 8(1) of Act 14 of 1982, this Bench in the case of ***M.Shylaja Vs.The Additional Chief Secretary to Government and others*** reported in ***2023/MHC/193*** has held that such infraction would lead to dislodgement of impugned preventive detention order.

8. In the light of narrative, discussion and dispositive reasoning supra, we have no hesitation in saying that the impugned preventive detention order deserves to be dislodged in the case on hand.

9. Before concluding, we also remind ourselves that preventive detention is not a punishment and HCP is a high prerogative writ.

10. Apropos, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 05.12.2022 bearing reference BCDFGISSSV No.207/2022 made by the second respondent is set aside and the detenu Thiru.G.Seshan, male, aged 21 years, son of Thiru.Gopi, is



HCP No.1 of 2023

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.)
28.06.2023

Index : Yes

Speaking

Neutral Citation : Yes

mk

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

To

1. The Principal Secretary to Government
Home, Prohibition and Excise Dept.,
Secretariat
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
L & O, T-1, Tambaram Nagar Police Station
Chennai.
5. The Public Prosecutor
High Court, Madras.



WEB COPY



HCP No.1 of 2023

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

mk

H.C.P.No.1 of 2023

28.06.2023