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HCP No.60 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.60 of 2023

Mohanapriya

D/o.Ramesh

.. Petitioner

Vs.

1. State of Tamil Nadu
Represented by its Secretary
Prohibition and Excise Department
Fort St.George
Chennai-600 009.
2. The District Magistrate and District Collector
Salem
Salem District.
3. The Superintendent of Police
Salem
Salem District.
4. The Superintendent of Prison
Central Prison, Salem
Salem District.
5. The Inspector of Police
Mettur Police Station
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 of the detention dated 05.12.2022 in detention order CMP No.33/GOONDA/C2/2022 on the file of second respondent herein and quash the same and direct the respondents herein to produce the body of the detenu Prakash son of Madhu, Hindu aged about 30 years, who is now confined in Central Prison, Salem before the Hon'ble Court and set him at liberty.

For Petitioner	:	Mr.R.Thamaraiselvan
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 wife of the detenu assailing a 'preventive detention order dated 05.12.2022 bearing reference C.M.P.No.33/GOONDA/C2/2022' [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 the impugned preventive detention order has been made by second respondent.



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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.

3. There is no adverse case. This solitary case which is the sole substratum of the impugned preventive detention order is Crime No.169 of 2022 on the file of Mettur Police Station for an alleged offence under Section 302 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.

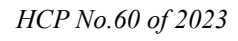
4. Mr.R.Thamarai Selvan, learned counsel on record for petitioner and Mr.E.Raj Thilak, learned State Additional Public Prosecutor for all respondents are before us.



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5. In the support affidavit qua captioned HCP, several grounds have been raised / urged but in the final hearing, Mr.R.Thamarai Selvan, learned counsel on record for petitioner predicated his campaign against the impugned preventive detention order on one point and that one point turns on a very crucial and critical document furnished to detenu as part of the grounds booklet and being completely illegible resulting in right of detenu to make an effective representation against the impugned preventive detention order getting impaired. In this regard, learned counsel drew our attention to a portion of grounds of impugned preventive detention order and submitted that the Detaining Authority has specifically noted that the remand of the detenu was extended till 06.12.2022. Learned counsel submits that this is a critical document but the same has not been furnished to the detenu. In response to this argument, learned Prosecutor drew our attention to page No.94 and submitted that Page No.94 of grounds booklet is the concerned document and the same is as follows:





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6. We have no difficulty in accepting the argument of the learned counsel for petitioner that the crucial and critical document is completely illegible. The sequitur argument that this has impaired the rights of the detenu to make an effective representation qua impugned preventive detention order is also accepted for the self-same reason. To be noted, right of the detenu to make an effective representation qua impugned preventive detention order is a constitutional safeguard ingrained in Article 22(5) of Constitution of India. As there is infraction of this constitutional safeguard, we have no difficulty in saying that the impugned preventive detention order deserves to be dislodged.

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

8. Apropos, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 05.12.2022 bearing reference C.M.P.No.33/GOONDA/C2/2022 made by the second respondent is set aside and the detenu Thiru.Prakash, male, aged 30 years, son of Madhu, is directed



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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, Salem.

To

1. State of Tamil Nadu
Represented by its Secretary
Prohibition and Excise Department
Fort St.George
Chennai-600 009.
2. The District Magistrate and District Collector
Salem, Salem District.
3. The Superintendent of Police
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6. The Public Prosecutor
High Court, Madras.



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

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