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H.C.P.No.76 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.07.2023

CORAM

THE HONOURABLE MR.JUSTICE **M.SUNDAR**
and
THE HONOURABLE MR.JUSTICE **R.SAKTHIVEL**

H.C.P.No.76 of 2023

Senthilkumari

.. Petitioner

Vs

1. The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai -9.
2. District Collector and District Magistrate,
Tirupathur District, Tirupathur – 635 601.
- 3.The Superintendent of Police,
Tirupathur District, Tirupathur.
- 4.The Superintendent of Prison,
Central Prison, Vellore – 2.
- 5.The Inspector of Police,
Ambur Taluk Police Station,
Tirupathur 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 records in connection with the order of detention passed by the second respondent dated 03.01.2023 in C3/D.O.No.02/2023 against the petitioner's son Appu @ Divakar, male, aged 24 years, S/o.Somu, who



H.C.P.No.76 of 2023

is confined at Central Prison, Vellore and set aside the same and direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner : Mr.D.Balaji
For Respondents : Mr.E.Raj Thilak
Additional Public Prosecutor

ORDER

[Order of the Court was made by **M.SUNDAR, J.,**]

When the captioned 'Habeas Corpus Petition' (hereinafter 'HCP' for the sake of convenience and clarity) was listed in the Admission Board on 20.01.2023, this Court made the following order:

'Captioned Habeas Corpus Petition has been filed in this Court on 09.01.2023 inter alia assailing a detention order dated 03.01.2023 bearing reference C3/D.O.No.02/2023 made by 'second respondent' [hereinafter 'Detaining Authority' for the sake of convenience and clarity].

2. The mother of the detenu is the petitioner.

3. Mr.D.Balaji, learned counsel on record for habeas corpus petitioner is before us. Learned counsel expresses regret for not representing the matter yesterday.

4. The aforementioned detention order has been made on the premise that the detenu is a 'Goonda' under Section 2(f) of '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].

5. The detention order has been assailed inter alia on the ground that the Detaining Authority has exceeded the



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H.C.P.No.76 of 2023

jurisdiction and passed the order of detention under Section 2 of Act 14 of 1982 without any power.

6. Prima facie case made out for issue of notice.

7. Admit. Issue notice returnable in four weeks.

8. Mr.R.Muniyapparaj, learned Additional Public Prosecutor, State of Tamil Nadu accepts notice for all respondents. List the captioned Habeas Corpus Petition accordingly.'

2. The aforementioned order made in the 20.01.2023 Admission listing shall be read as an integral part and parcel of this order which means that the short forms, short references and abbreviations used in the order in the Admission listing shall be used in the instant order also.

3. There are four adverse cases. The ground case which constitutes substantial part of substratum of the impugned preventive detention order is Crime No.342 of 2022 on the file of Ambur Taluk Police Station for the alleged offences under Sections 341, 294(b) and 392 of IPC. 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.



H.C.P.No.76 of 2023

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

5. As would be evident from the aforementioned 20.01.2023 order (more particularly paragraph 5 thereat) at the time of admission, learned counsel projected the point that the detaining authority has exceeded the jurisdiction and passed the order of detention under Section 2 of Act 14 of 1982 without any power but in the final hearing today, learned counsel on record for HCP petitioner predicated his campaign against the impugned preventive detention order on one point and that one point is different dates being given in the Arrest Intimation Form which is in English and the Tamil translation of the same.

6. Elaborating on the aforesaid point, learned counsel drew our attention to pages 62 and 63 of the grounds booklet and a scanned reproduction of the same is as follows:



H.C.P.No.76 of 2023

English Version:

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(62)


TAMIL NADU POLICE
ARREST INTIMATION FORM

1. NAME & ADDRESS OF ARRESTED PERSON	:	DIVAKAR APPU (24), S/o. SOMU, NO 5887 KAMBAN STREET, MC ROAD, PERIYANKUPPAM VILLAGE, AMBUR TALUK.
2. NATURE OF CASE & ITS DETAILS (CR.NO)	:	Ambur Taluk (Thirupathur dist) CR.NO. 2725022
3. SECTIONS OF LAW	:	457,390-IPC
4. INFORMATION ABOUT ARREST:REASON FOR ARREST	:	
5. PLACE OF ARREST	:	Qatarah Lari, Ambur Taluk
6. DATE & TIME OF ARREST	:	09-10-2022 @ 11:00 Hrs.
7. CUSTODY PLACE (PS / OTHER PLACE)	:	AMBUR TALUK PS
8. WEAPONS / THINGS WHICH ARE SEIZED FROM THE ARRESTED PERSON OR HIS LOCALITY	:	
9. INJURIES FOUND ON THE BODY OF ARRESTED PERSON	:	NO
10. WHETHER ARRESTED PERSON SUFFERED FROM ANY CHRONIC DISEASE (ASKED FROM ARRESTED PERSON)	:	NO
11. WHETHER ARRESTED PERSON SENT FOR MEDICAL TREATMENT ?	:	YES
12. INFORMATION ABOUT IF ARREST INFORMED TO RELATIVE / FRIEND OF ACCUSED	:	[MOTHER] SENTHILKUMARI(45), W/o. SOMU, NO.5887 KAMBAN STREET, MC ROAD, PERIYANKUPPAM VILLAGE, AMBUR TALUK.

S. S. Nagar. S. Senthil Kumar [Signature]
SIGN OF ARRESTED PERSON SIGN OF WITNESS SIGNATURE OF OFFICER BY WHOM THE ARREST WAS MADE

[SMS SENT THROUGH 9994172705]

2725022

ச. சீவாஜ்
[Signature]
காவல் துறை,
அம்புர் தாலுக்கா காவல் நிலையம்,
அம்புர், திருப்பாற்கோட்டை மாவட்டம்.



Tamil Version:

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தமிழ்நாடு உயர்நீதிமன்றம் சைத்து தகவல் படிவம்		63
1. சைத்து செம்பெய்ப்பட்ட நபரின் பெயர் மற்றும் குடியாதி	:	சீதாரத் (பெயர்), (39) த/பெ. கோடு, எண். 3/2027, கம்பர் குகை, எம்.சி. கோடு, பெர்மாசுத்திரம் கிராமம், ஆம்பூர் தாலுக்கா.
2. சைத்து செம்பெய்ப்பட்ட நபரின் சைத்து தகவல் (பெயர், வயது)	:	ஆம்பூர் கிராமம் துணைத்தலைவர் மாவட்டம் சைத்து தகவல், எ.பெ.எண். 374/2023, 437, 380 கி.மீ.
3. கம்பர் பி.பி.பி.பி.பி.	:	
4. சைத்து செம்பெய்ப்பட்ட நபரின் விவரங்கள்/சைத்து செம்பெய்ப்பட்ட நபரின் விவரங்கள்	:	சைத்து செம்பெய்ப்பட்ட நபரின் விவரங்கள்
5. சைத்து செம்பெய்ப்பட்ட நபரின் விவரங்கள்	:	சைத்து செம்பெய்ப்பட்ட நபரின் விவரங்கள்
6. சைத்து செம்பெய்ப்பட்ட நபரின் விவரங்கள்	:	சைத்து செம்பெய்ப்பட்ட நபரின் விவரங்கள்
7. சைத்து செம்பெய்ப்பட்ட நபரின் விவரங்கள்	:	சைத்து செம்பெய்ப்பட்ட நபரின் விவரங்கள்
8. சைத்து செம்பெய்ப்பட்ட நபரின் விவரங்கள்	:	சைத்து செம்பெய்ப்பட்ட நபரின் விவரங்கள்
9. சைத்து செம்பெய்ப்பட்ட நபரின் விவரங்கள்	:	சைத்து செம்பெய்ப்பட்ட நபரின் விவரங்கள்
10. சைத்து செம்பெய்ப்பட்ட நபரின் விவரங்கள்	:	சைத்து செம்பெய்ப்பட்ட நபரின் விவரங்கள்
11. சைத்து செம்பெய்ப்பட்ட நபரின் விவரங்கள்	:	சைத்து செம்பெய்ப்பட்ட நபரின் விவரங்கள்
12. சைத்து செம்பெய்ப்பட்ட நபரின் விவரங்கள்	:	சைத்து செம்பெய்ப்பட்ட நபரின் விவரங்கள்



H.C.P.No.76 of 2023

7. As already alluded to supra, the Date and Time of Arrest in English says '09.10.2022 @ 11.00 Hrs' whereas in Tamil translation, it has been mentioned as '09.11.2022 - 11.00 மணி'. To be noted, there is overwriting on the date in English version.

8. The above point turns solely on records before us and therefore learned Prosecutor really does not have much of a say.

9. Be that as it may, we are informed that the literacy level of the detenu is 9th standard and he is a school drop out. The aforementioned date in Arrest Intimation Form in English and Tamil translation of the same is that of a nature which can baffle the detenu, impairing his right to make an effective representation against the impugned preventive detention order. To be noted, right of a detenu to make a representation i.e., an effective representation against a preventive detention order is a sanctus/sacrosanct constitutional safeguard ingrained in Article 22(5) of the Constitution of India and therefore the infraction of the same vitiates the impugned preventive detention order and leaves the preventive detention order liable for dislodgement in this habeas legal drill.

10. Ergo, the sequitur is, captioned HCP is allowed. Impugned



H.C.P.No.76 of 2023

preventive detention order dated 03.01.2023 bearing reference C3/D.O.No.02/2023 made by the second respondent is set aside and the detenu Thiru.Appu @ Divakar, aged 24 years, Son of Thiru.Somu, 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.)
24.07.2023

Index : Yes/No

Neutral Citation : Yes/No

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

To

1. The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai -9.
2. The District Collector and District Magistrate,
Tirupathur District, Tirupathur – 635 601.
- 3.The Superintendent of Police,
Tirupathur District, Tirupathur.
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- 5.The Inspector of Police,
Ambur Taluk Police Station, Tirupathur District.
- 6.The Public Prosecutor, High Court, Madras.

Page Nos.8/9



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H.C.P.No.76 of 2023

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

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H.C.P.No.76 of 2023

24.07.2023

Page Nos.9/9