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H.C.P.No.64 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.07.2023

CORAM

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

H.C.P.No.64 of 2023

Rehman Sharif

.. Petitioner

Vs

1. The Secretary to Government,
Home, Prohibition and Excise Department,
Chennai -9.

2. Commissioner of Police,
Greater Chennai, Vepery, Chennai – 7.

3.The Superintendent,
Central Prison, Puzhal, Chennai.

4.The Inspector of Police,
Cyber Crime Cell,
Central Crime Branch,
Vepery, Chennai – 7.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus to direct the respondents to produce the body of the detenu Salman Sharief, aged 29 years, S/o.Shakeel Sharief, who is detained in Central Prison, Puzhal, Chennai, before this Court and pass an order to call for the



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records of detention order passed by the second respondent in No.487/BCDFGISSSV/2022 dated 28.12.2022 against the petitioner's brother Salman Sharief, aged 29 years, S/o.Shakeel Sharief, and set aside the same and set the detenu at liberty.

For Petitioner : Mr.K.Anand

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 28.12.2022 bearing reference No.487/BCDFGISSSV/2022 made by 'second respondent' [hereinafter 'Detaining Authority' for the sake of convenience and clarity].

2. The brother of the detenu is the petitioner.

3. Mr.K.Anand, 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 'Cyber Law Offender' under



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Section 2(bb) 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 failed to apply his mind as he has not noted the fact that the Sponsoring Authority has not placed the papers relating to the adverse case.

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 is no adverse case. The ground case which is the sole



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substratum of the impugned detention order is Crime No.130 of 2022 on the file of Cyber Crime Division I for the alleged offences under Section 420 of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] and Sections 4, 20, 21, 25 of Indian Telegraph Act, 1885 and Section 66C of Information Technology (Amendment) Act, 2008. 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.

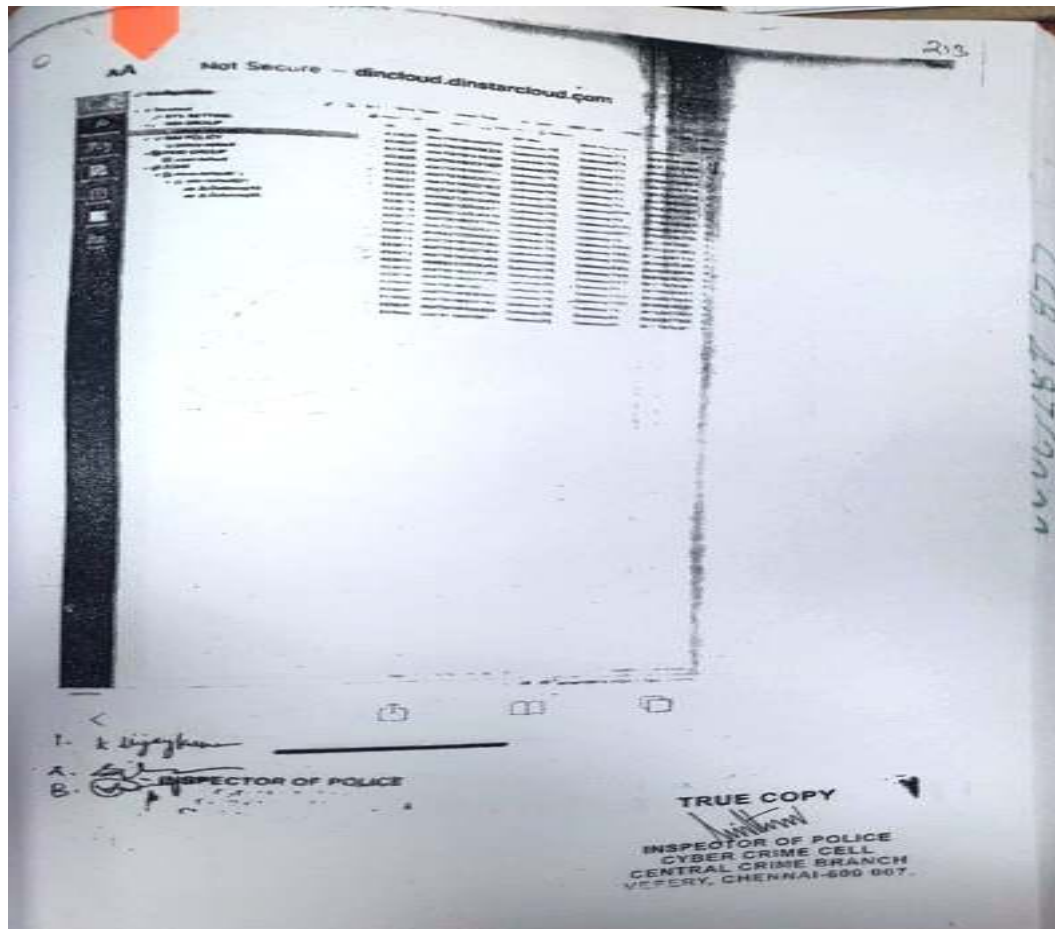
4. Mr.K.Anand, learned counsel on record for petitioner and Mr.E.Raj Thilak, learned State Additional Public Prosecutor for all respondents are before us.

5. As would be evident from the aforementioned 20.01.2023 Admission Board proceedings, at the time of admission, the point that detaining authority has failed to apply his mind as sponsoring authority has not placed before him papers relating to adverse case was projected but in the Final Hearing Board today, Mr.K.Anand, learned counsel for petitioner submitted that some of the pages in the grounds booklet are completely not readable. As an illustration, learned counsel



drew our attention to page No.213 which is as follows:

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6. To be noted, learned counsel pointed out that page No.213 is supposed to be call data of calls between the detenu and co-accused in the ground case which is the sole substratum of the impugned preventive detention order.

7. The above mentioned point turns heavily on records and therefore learned Prosecutor really does not have much of a say.

8. We have no hesitation in persuading ourselves to say that



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detenu's sacrosanct constitutional right to make an effective representation against the impugned preventive detention order has been impaired owing to the aforementioned copies which are not readable at all. This means that there is infraction of constitutional safeguard ingrained in Article 22 (5) of the Constitution of India leading to the inevitable sequitur that impugned preventive detention order deserves to be dislodged.

9. Ergo, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 28.12.2022 bearing reference No.487/BCDFGISSSV/2022 made by the second respondent is set aside and the detenu Thiru.Salman Sharief, aged 29 years, Son of Thiru.Shakeel Sharief, 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.)
10.07.2023

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

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To

1. The Secretary to Government,
Home, Prohibition and Excise Department,
Chennai -9.
2. Commissioner of Police,
Greater Chennai, Vepery, Chennai – 7.
- 3.The Superintendent,
Central Prison, Puzhal, Chennai.
- 4.The Inspector of Police,
Cyber Crime Cell,
Central Crime Branch,
Vepery, Chennai – 7.
- 5.The Public Prosecutor
High Court, Madras.



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

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