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H.C.P.No.117 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.06.2023

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THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE Mr.JUSTICE R.SAKTHIVEL

H.C.P.No.117 of 2023

Jayalakshmi

W/o. Ashok @ Ashok Kumar

.. Petitioner /
Wife of the detenu

Vs.

1. The State of Tamil Nadu
Rep. By its Additional Chief Secretary to Government
Prohibition & Excise Department (Home)
Fort St.George, Chennai – 600 009
2. The District Collector and District Magistrate
Thiruvarur District
Thiruvarur
3. The Superintendent of Police
Thiruvarur District
Thiruvarur
4. The Superintendent of Prison
Central Prison
Thiruchirapalli
5. The Inspector of Police
Perugavazhathan Police Station

Page Nos.1/8



H.C.P.No.117 of 2023

Thiruvavarur District

... Respondents

WEB COPY Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus calling for the records pertaining to the detention order dated 26.10.2022 in C.O.C.No.34 of 2022 passed by the 2nd respondent and issue direction to produce the body of the detenu namely Ashok @ Ashok Kumar, aged 33, son of Rajappa presented confined in Central Prison, Thiruchirapalli before this Court and set him at liberty forthwith.

For Petitioner	:	Mr.Swami Subramanian
For Respondents	:	Mr.E.Raj Thilak Additional Public Prosecutor

ORDER

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

When the matter came up for admission on 27.01.2023, this Bench made an order and a scanned reproduction of the same is as follows:



H.C.P.No.117 of 2023

WEB COPY

H.C.P.No.117 of 2023

H.C.P.No.117 of 2023

M.SUNDAR, J.,
and
M.NIRMAL KUMAR, J.,

(Order of the Court was made by M.SUNDAR, J.,)

Captioned Habeas Corpus Petition has been filed in this Court on 19.01.2023 *inter alia* assailing a detention order dated 26.10.2022 bearing reference C.O.C.No.34/2022 made by 'second respondent' [hereinafter 'Detaining Authority' for the sake of convenience and clarity]. To be noted, fifth respondent is the Sponsoring Authority.

2. Wife of the detenu is the petitioner.

3. Mr.Swami Subramanian, learned counsel on record for habeas corpus petitioner is before us. Learned counsel for petitioner submits that ground case qua the detenu is for alleged offences under Sections 147, 148, 341, 294(b), 323, 324, 332, 427, 379 and 307 IPC in Crime No.180 of 2022 on the file of Perugavazhathan Police Station.

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



WEB COPY



H.C.P.No.117 of 2023

H.C.P.No.117 of 2023

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 in the detention order, it was mentioned by the Sponsoring Authority that there is imminent possibility of being enlarged on bail but no material has been placed to substantiate the same.

6. *Prima facie* case made out for admission. Admit. Issue Rule nisi returnable by four weeks.

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


[M.S.J.,]


[M.N.K.J.,]

27.01.2023

mk



H.C.P.No.117 of 2023

2. Mr.Swami Subramanian, learned counsel on record for petitioner and Mr.E.Raj Thilak, learned State Additional Public Prosecutor for all respondents are before us.

3. In the admission Board though subjective satisfaction qua imminent possibility of detenu being enlarged on bail point was projected, in the hearing today, Mr.Swami Subramaniam, learned counsel for petitioner drew our attention to pages 36 and 41/42 of the grounds booklet served on the detenu. To be noted, pages 36 is the prayer for remand placed before the jurisdictional Magistrate by the Sponsoring Authority and pages 41/42 are the First Information Report (FIR) in the ground case. Learned counsel pointed out that these pages are not legible and not readable.

4. We had the benefit of perusing the grounds booklet served on the detenu. We are unable to disagree with counsel for petitioner. As this matter turns heavily on records before this Court, learned Prosecutor has little say (no say).



H.C.P.No.117 of 2023

5. We find that the documents referred to supra are critical documents as one is a prayer for remand placed before the jurisdictional Magistrate by the Sponsoring Authority and the other is FIR in the ground case. These two being crucial and critical documents, we are of the view that these illegible copies in the grounds booklet have impaired the rights of the detenu to make an effective representation qua the impugned preventive detention order. We remind ourselves that such a right i.e., right of the detenu to make an effective representation against impugned preventive detention order is a sanctus right ingrained in Article 22(5) of the Constitution of India. As this is infraction of the constitutional right/constitutional safeguard ingrained in Article 22(5) of the Constitution, we are of the view that the impugned preventive detention order deserves to be dislodged.

6. Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 26.10.2022 bearing reference C.O.C.No.34/2022 made by the second respondent is set aside and the detenu Mr.Ashok @ Ashok Kumar, son of Mr.Rajappa, is directed to be set at liberty forthwith, if not required in connection with any other case / cases. There shall be no



H.C.P.No.117 of 2023

order as to costs.

WEB COPY

(M.S.,J.)

(R.S.V.,J.)

14.06.2023

Index : Yes/No

Speaking order/Non-speaking order

Neutral Citation : Yes /No

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

To

1. Additional Chief Secretary to Government
Prohibition & Excise Department (Home)
Fort St.George, Chennai – 600 009
2. The District Collector and District Magistrate
Thiruvarur District
Thiruvarur
3. The Superintendent of Police
Thiruvarur District
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4. The Superintendent of Prison
Central Prison
Thiruchirappalli
5. The Inspector of Police
Perugavazhathan Police Station
Thiruvarur District
6. The Public Prosecutor
Madras High Court, Chennai

M.SUNDAR, J.
and

Page Nos.7/8



WEB COPY



H.C.P.No.117 of 2023

R.SAKTHIVEL, J.

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H.C.P.No.117 of 2023

14.06.2023

Page Nos.8/8