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H.C.P.No.128 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.07.2023

Coram

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

H.C.P.No.128 of 2023

Anupkumar

.. Petitioner

VS

- 1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai – 9.
- 2.The Commissioner of Police,
Avadi City
Office of the Commissioner of Police (Goondas Section)
Avadi, Chennai – 600 054
- 3.The Superintendent of Prison,
Central Prison, Puzhal
Chennai – 600 066
4. The Inspector of Police
E-5, Sholavaram Police Station
Chennai – 600 067

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus calling for the records connected with the detention order of the 2nd respondent in No.10/BCDFGISSSV/2023 dated 11.01.2023 and quash the same and



H.C.P.No.128 of 2023

direct the respondents to produce the body and person of detenu namely Aravinthkumar@ Aravinth, S/o.Karunakaran, aged about 39 years, detained in Central Prison, Puzhal, Chennai before this Court and set him at liberty forthwith.

For Petitioner : Mr.B.M.Santharam
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 31.01.2023, this Court made the following order:

'Captioned Habeas Corpus Petition has been filed in this Court on 20.01.2023 inter alia assailing a detention order dated 11.01.2023 bearing reference Memo No.10/BCDFGISSSV/2023 made by 'second respondent' [hereinafter 'Detaining Authority' for the sake of convenience and clarity]. To be noted, fourth respondent is the Sponsoring Authority.

2. Brother of the detenu is the petitioner.

3. Mr.B.M.Santharam, learned counsel on record for habeas corpus petitioner is before us. Learned counsel for



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H.C.P.No.128 of 2023

petitioner submits that ground case qua the detenu is for alleged offences under Sections 341, 294(b), 336, 427, 392, 397 and 506(ii) IPC in Crime No.1031 of 2022 on the file of E-5, Sholavaram 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 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 some of the pages of the booklet furnished to the detenu were illegible and some pages were not properly translated preventing the detenu from making effective representation.

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

7. Mr.R.Muniyapparaj, learned Additional Public Prosecutor, State of Tamil Nadu accepts notice for all respondents. '



H.C.P.No.128 of 2023

2. The aforementioned order made in the 31.01.2023 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 and one ground case. The ground case which constitutes substantial part of substratum of the impugned preventive detention order is Crime No.1031 of 2022 on the file of E-5 Sholavaram Police Station for alleged offences under Sections 341, 294(b), 336, 427, 392, 397 and 506(ii) 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.

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

5. At the time of admission i.e., in the Admission Board, the point that some of the pages of the booklet furnished to the detenu were illegible and some pages were not properly translated which prevented the detenu from making effective representation was projected, but in the final hearing learned counsel predicated his campaign against the impugned preventive detention order on the point that subjective



H.C.P.No.128 of 2023

satisfaction arrived at by the detaining authority qua imminent possibility of detenu being enlarged on bail is impaired. Learned counsel drew the attention of this Court to paragraph 4 of grounds of detention and the relevant portion reads as follows:

'4. I am aware that Thiru.Aravinthkumar @ Aravinth is in remand in E-5 Sholavaram Police Station Crime Nos.452/2022, 996/2022, 1004/2022, 1026/2022 and 1031/2022. He has not moved any bail applications for E-5 Sholavaram Police Station Crime Nos. 452/2022, 996/2022, 1004/2022, 1026/2022 and 1031/2022 cases. The sponsoring authority has stated that it is learnt that the relatives of Thiru.Aravindhkumar@ Aravinth are taking action to take him out on bail in E-5 Sholavaram Police Station Crime Nos. 452/2022, 996/2022, 1004/2022, 1026/2022 and 1031/2022 cases by filing bail applications before the appropriate court, since in a similar case, the bail was granted by the court after a lapse of time.....'

6. Adverting to the aforementioned portion of the grounds of impugned preventive detention order, learned counsel submitted that Section 161(3) of 'The Code of Criminal Procedure, 1973 (2 of 1974)' [hereinafter 'Cr.P.C' for the sake of brevity and clarity] statement recorded from the brother of the detenu and a special report from the Sponsoring Authority are undated.



H.C.P.No.128 of 2023

7. The aforementioned point turns on records. A careful perusal of the grounds booklet says that there is a Section 161(3) Cr.P.C statement from brother of the detenu one Thiru.Anopkumar (HCP petitioner before us) and a special report from the Sponsoring Authority at pages 180 and 181 of the booklet but both do not contain a date. This means that it is not clear as to whether the Section 161(3) Cr.P.C statement and the special report are prior to the date of impugned preventive detention order or after the date of the impugned preventive detention order. To be noted, date of impugned preventive detention order is 11.01.2023 and the same was served on the detenu on the same day and the grounds have been served on the detenu on 12.01.2023. Therefore, the benefit of doubt has to be given to the detenu. If the benefit of doubt as regards the date of special report and Section 161(3) Cr.P.C is given to the detenu, it follows as a sequitur that the subjective satisfaction arrived at by the detaining authority qua imminent possibility of detenu being enlarged on bail is impaired. Further sequitur is, impugned preventive detention order deserves to be dislodged.



H.C.P.No.128 of 2023

8. Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 11.01.2023 bearing reference No.10/BCDFGISSSV/2023 made by the second respondent is set aside and the detenu Thiru.Aravinthkumar @ Aravinth, aged 39 years, son of Thiru.Karunakaran, 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.)
17.07.2023

Index : No

Neutral Citation : No

gpa

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



H.C.P.No.128 of 2023

To

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H.C.P.No.128 of 2023

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

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