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HCP No.138 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.07.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

H.C.P.No.138 of 2023

Munusamy
S/o.Raji

.. Petitioner

Vs.

1. The State of Tamil Ndu
Rep. by its Secretary to Government
Home, Prohibition and Excise (XVI) Department
Fort St.George, Secretariat
Chennai-600 009.
2. The District Collector and District Magistrate of
Ranipet District, Ranipet.
3. The Superintendent of Police
Ranipet District
Ranipet.
4. The Superintendent of Prison
Central Prison
Vellore, Vellore District.
5. The Inspector of Police
All Women Police Station,
Ranipet, Ranipet 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 in connection with the order of detention passed by the second respondent dated 28.12.2022 in his office ref/B3.D.O.No.78/2022 against the petitioner's son by name Thiru.Baskaran @ Bagudu Baskar, son of Thiru.Munusamy, aged about 33 years, now confined at Central Prison, Vellore, Vellore District and set aside the same and direct the respondents to produce the above said detenu before this Hon'ble Court and set him at liberty.

For Petitioner : Mr.E.Kannadasan
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 28.12.2022 bearing reference B3/D.O.No.78 of 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. Father of the detenu is the petitioner.

3. Mr.E.Kannadasan, learned counsel on record for habeas



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corpus petitioner is before us. Learned counsel for petitioner submits that ground case qua the detenu is for alleged offences under Sections 354B, 450, 354C, 307, 376(2)(n), 506(ii), 109 of IPC read with Section 5(l), 5(r), 6(1), 17, 11(5), 12, 14(2) of 'The Protection of Children from Sexual Offences Act, 2012 (32 of 2012)' [hereinafter 'POCSO Act' for the sake of brevity] in Crime No.7 of 2022 on the file of All Women Police Station, Ranipet.

4. The aforementioned detention order has been made on the premise that the detenu is a 'Sexual Offender' under Section 2(ggg) 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 in the booklet were illegible and the representation given by the petitioner for supply of legible copies was not considered.

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.'



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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 is no adverse case. This solitary case which is the sole substratum of the impugned preventive detention order is Crime No.7 of 2022 on the file of Ranipet All Women Police Station for alleged offences under Sections 450, 354B, 354C, 307, 376(2)(n), 506(ii), 109 of IPC read with Section 5(l), 5(r), 6(1), 17, 11(5), 12, 14(2) of POCSO Act. 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.E.Kannadasan, 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.E.Kannadasan, 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 that 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 Page No.10 which is கைப்பற்றுதல் மகஜர். A scanned reproduction of the same is as follows:



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6. We had the benefit of perusing the grounds booklet served on the detenu. As this turns on record, learned Prosecutor really does not have much of a say. 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. 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 28.12.2022 bearing reference No.B3/D.O.No.78/2022 made by the second respondent is set aside and the



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detenu Thiru.Baskaran @ Bagudu Baskar, aged 33 years, son of Munusami,
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.)
03.07.2023

Index : Yes / No
Speaking / Non-speaking order
Neutral Citation : Yes / No

mk

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

To

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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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