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HCP No.147 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.06.2023

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THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

H.C.P.No.147 of 2023

Anguri Konda Babu
S/o.Venkat Rao

.. Petitioner

Vs.

1. The Additional Chief Secretary to Government
Home, Prohibition and Excise (XVI) Dept.,
Fort St.George, Secretariat
Chennai-600 009.
2. The Commissioner of Police
Office of the Commissioner of Police
Avadi City, Chennai-600 054.
3. The Superintendent of Prison
Central Prison at Puzhal-II,
Chennai-600 066.
4. The Inspector of Police
M-4, Red Hills Police Station
Chennai 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 detention order in No.179/BCDFGISSSV/2022 dated 09.12.2022 on the file of the 2nd



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respondent and set aside the same and direct the respondents herein to produce the body of the petitioner / detenu Anuguri Konda Babu, son of Venkat Rao, aged 26 years now confined in Central Prison at Puzhal, Chennai, before this Hon'ble Court and set him at liberty.

For Petitioner : Mr.M.Mohammed Saifulla
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 02.02.2023, this Court made the following order:

'Captioned Habeas Corpus Petition has been filed in this Court on 23.01.2023 inter alia assailing a detention order dated 09.12.2022 bearing reference No.179/BCDFGISSSV/2022 made by 'second respondent' [hereinafter 'Detaining Authority' for the sake of convenience and clarity]. To be noted, fourth respondent is the Sponsoring Authority.

2. Detenu himself is the petitioner.

3. Ms.R.Subadra Devi, 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 8(c) read with 20(b)(ii)(C), 25, 29(1) of NDPS Act, 1985 in Crime No.653 of 2022 on the file of Redhills Police Station, Chennai



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District.

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4. *The aforementioned detention order has been made on the premise that the detenu is a 'Drug Offender' under Section 2(e) 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 grounds that some of the pages in the booklet served on the detenu were illegible and some of the documents were in English and Tamil but the detenu is familiar only with Telugu.*

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.'*

2. The aforementioned order made in the 02.02.2023 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.



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3. There is no adverse case. This solitary case which is the sole substratum of the impugned preventive detention order is Crime No.653 of 2022 on the file of M4 Red Hills Police Station for alleged offences under Sections 8(c) read with 20(b)(ii)(C), 25, 29(1) of NDPS Act, 1985. 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.M.Mohammed Saifulla, learned counsel on record for petitioner and Mr.E.Raj Thilak, learned State Additional Public Prosecutor for all respondents are before us.

5. Though at the time of admission, the arguments that some of the pages in the booklet served on the detenu were illegible and some of the documents were in English and Tamil but the detenu is familiar only with Telugu were projected, in the final hearing, learned counsel assails the impugned preventive detention order on the ground that subjective satisfaction arrived at by the Detaining Authority qua imminent possibility of the detenu being enlarged on bail is impaired. Elaborating on this argument, learned counsel drew our attention to a portion of paragraph No.3 of grounds



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of impugned preventive detention order which reads as follows:

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'3..... In a similar case registered in D1 Triplicane Police Station Cr.No.932/2020 u/s 8(c) r/w 20(b)(ii)(B) of NDPS Act 1985 bail was granted by the Principal Special Court under EC & NDPS Act, Chennai in CrI.M.P.No.1842/2020. Hence, I infer that there is real possibility of his coming out on bail in M4 Red Hills Police Station Cr.No.653/2022 by filing bail application before the appropriate Court, since in similar case bail is granted by the Courts after a lapse of time.....'

6. Learned counsel submitted that the aforementioned bail order has not been furnished to the detenu as part of grounds booklet.

7. We had the benefit of perusing the grounds booklet served on the detenu and we have no reason to disagree with the learned counsel for petitioner. As the matter turns heavily on records, learned Prosecutor really does not have much of a say. Reverting to the point argued by learned counsel for petitioner, we find that similar case bail order has not been furnished to the detenu as part of grounds booklet and this has impaired the detenu's right to make an effective representation qua impugned preventive detention order. To be noted, such a right of the detenu is a sanctus constitutional safeguard ingrained in Article 22(5) of the Constitution of



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India. As there is infraction of this sanctus constitutional safeguard, the sequitur is impugned preventive detention order deserves to be dislodged.

8. Before concluding, we also remind ourselves that preventive detention is not a punishment and HCP is a high prerogative writ.

9. Apropos, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 09.12.2022 bearing reference No.179/BCDFGISSSV/2022 made by the second respondent is set aside and the detenu Thiru.Anuguri Konda Babu, male, aged 26 years, son of Thiru.Venkat Rao, 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.)
28.06.2023

Index : Yes
Speaking
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

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M.SUNDAR, J.,
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R.SAKTHIVEL, J.,

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