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H.C.P.No.150 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.150 of 2023

M.Murugan

.. Petitioner

Vs

1.The State of Tamil Nadu
Rep. By its Secretary to Government,
Department of Prohibition and Excise (Home),
Fort St. George, Chennai -9.

2.The Commissioner of Police,
Greater Chennai,
Office of the Commissioner of Police (Goondas Section)
Vepery, Chennai - 7.

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

4.The Inspector of Police,
R5 Virugambakkam Police Station, Chennai.

.. 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 relating to the impugned order in BCDFGISSSV No.11/2023 dated 06.01.2023 on the file of the second respondent herein and set aside the same as illegal and direct the respondents to produce detenu

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Chella @ Selvaraj, son of Murugan, aged about 25 years, now confined at Central Prison, Puzhal, Chennai before this Court and set him at liberty.

For Petitioner : Mr.P.Iyappan
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 25.01.2023 inter alia assailing a detention order dated 06.01.2023 bearing reference No.11/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. The father of the detenu is the petitioner.

3. Mr.P.Iyappan, 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)(B), 25 and 29(1) of NDPS Act, 1985 in Crime No753 of 2022 on the file of R-5, Virugambakkam Police Station, Chennai,

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



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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 family members of the detenu were not informed about the arrest and detention.

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. List the captioned Habeas Corpus Petition accordingly.'

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.

3. There is one adverse case. The ground case which constitutes substantial part of substratum of the impugned preventive detention order is Crime No.753 of 2022 on the file of R-5 Virugambakkam Police Station for the alleged offences under Sections 8(c) r/w 20(b)(ii)(B), 25 and 29(1) of NDPS 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.



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

5. In the Admission Board (as would be evident from paragraph 5 of the admission board order dated 02.02.2023) the point that family members of the detenu were not informed about the arrest and detention was projected but in the Final Hearing Board today, Mr.P.Iyyappan, learned counsel for petitioner predicated his campaign against the impugned preventive detention order on the point that a very crucial and critical document i.e., remand extension order has not been furnished to the detenu and this has impaired the detenu's right to make an effective representation. Elaborating on the submission, learned counsel drew our attention to two portions of the grounds of impugned preventive detention order and the same read as follows:

'....on 26.11.2022 and they were remanded to judicial custody till 09.12.2022 and were lodged at Central Prison, Puzhal, Chennai, as remand prisoners.'

'...Further, their remand period was extended till 10.01.2023 periodically. The investigation of the case is still not yet completed....'



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6. Adverting to the aforementioned portions and the grounds booklet, learned counsel submitted that the detaining authority has proceeded on the basis that the detenu was remanded to judicial custody on 26.11.2022 and the same was extended periodically upto 10.01.2023 but the grounds booklet does not show remand extension for the period between 09.12.2022 and 13.12.2022.

7. This Bench had the benefit of perusing the grounds booklet and there is no reason to disagree with the learned counsel for petitioner.

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

9. We have no hesitation in saying that the sanctus constitutional right ingrained in Article 22(5) of the constitution of India i.e., right of the detenu to make an effective representation against impugned preventive detention order has been subjected to infraction. This has left the impugned preventive detention order vitiated and it has rendered it liable to be dislodged.



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10. Ergo, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 06.01.2023 bearing reference No.11/BCDFGISSSV/2023 made by the second respondent is set aside and the detenu Thiru.Chella @ Selvaraj, aged 25 years, Son of Thiru.Murugan, 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.

To

- 1.The Secretary to Government,
Department of Prohibition and Excise (Home),
Fort St. George, Chennai -9.
- 2.The Commissioner of Police,
Greater Chennai,
Office of the Commissioner of Police (Goondas Section)
Vepery, Chennai 07.
- 3.The Superintendent of Police,
Central Prison, Puzhal, Chennai.
- 4.The Inspector of Police,
R5 Virugambakkam Police Station, Chennai.
- 5.The Public Prosecutor, High Court, Madras.

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

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