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HCP No.168 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.06.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

and

THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

H.C.P.No.168 of 2023

Chinni

S/o.Bhushan

.. Petitioner /
Friend of detenu

Vs.

1. The State of Tamil Nadu
Rep. by its Additional Chief Secretary to Government
Home, Prohibition and Excise Department
Chennai-600 009.
2. The Commissioner of Police
Avadi City
3. The Superintendent
Central Prison, Puzhal
Chennai-600 066.
4. State Rep. by
The Inspector of Police, L & O
M-4, Red Hills Police Station
Cr.No.653 of 2022

..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 detention order dated 09.12.2022 made in detention order



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No.175/BCDFGISSSV/2022 passed by the second respondent herein, quash the same and direct the respondents to produce the body or person of the petitioner's friend Mari Raju Babu, son of Mugree, male aged about 32 years branded as Drug Offender and now confined in Central Prison, Puzhal, Chennai, before this Hon'ble Court and set him at liberty.

For Petitioner : Mr.T.S.Sasikumar

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 06.02.2023, 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 09.12.2022 bearing reference No.175/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. The friend of the detenu is the petitioner.

3. Mr.T.S.Sasikumar, 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 M4 Red Hills Police Station.



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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 ground that detention order was not intimated to the family members or friends of the detenu which prevented the family members/friends from making an 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. List the captioned Habeas Corpus Petition accordingly.'*

2. The aforementioned order made in the 06.02.2023 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 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



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Section 8(c) read with Sections 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.T.S.Sasikumar, 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 argument that detention order was not intimated to the family members or friends of the detenu was 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 of impugned preventive detention order which reads as follows:

'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



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EC & NDPS Act, Chennai in Crl.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 i.e., 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 point turns completely 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 not being furnished to the detenu as part of grounds booklet 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 India. As there is infraction of this sanctus constitutional safeguard, the sequitur is impugned preventive detention order deserves to be dislodged.



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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.175/BCDFGISSSV/2022 made by the second respondent is set aside and the detenu Thiru.Mari Raju Babu, male, aged 32 years, son of Thiru.Mugree, 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 order
Neutral Citation : Yes
gpa

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



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To

1. The Additional Chief Secretary to Government
Home, Prohibition and Excise Department
Chennai-600 009.
2. The Commissioner of Police
Avadi City
3. The Superintendent
Central Prison, Puzhal
Chennai-600 066.
4. The Inspector of Police, L & O
M-4, Red Hills Police Station
5. The Public Prosecutor
High Court, Madras.



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

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