



H.C.P.No.229 of 2023

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.08.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

H.C.P.No.229 of 2023

Arshiya

.. Petitioner

Vs

1. The State of Tamil Nadu
Represented by its
Additional Chief Secretary to Government
Home, Prohibition and Excise Department
Fort St.George
Chennai – 600 009
2. The District Collector and District Magistrate
Krishnagiri District
Krishnagiri
3. The Superintendent of Police
Krishnagiri District
Krishnagiri

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4. The Superintendent of Central Prison
Salem District, Salem

5. The Inspector of Police
Gurubarappalli Police Station
Krishnagiri 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 made in S.C.No.01 of 2023 dated 08.01.2023 on the file of District Collector and District Magistrate, Krishnagiri District, the second respondent herein and quash the same as illegal and direct the respondents to produce the detenu Thabaraze, aged 26, son of Nowsath now confined in Central Prison, Salem before this Court and set him at liberty

For Petitioner : Mr.K.Kalaikovan

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' ['HCP' for the sake of brevity] was listed in the Admission Board on 15.02.2023, this Court made the following order:



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M.SUNDAR, J.,
and
M.NIRMAL KUMAR, J.,

(Order of the Court was made by M.SUNDAR, J.,)

Captioned Habeas Corpus Petition has been filed in this Court on 06.02.2023 *inter alia* assailing a detention order dated 08.01.2023 bearing reference S.C.No.01/2023 made by 'second respondent' [hereinafter 'Detaining Authority' for the sake of convenience and clarity]. To be noted, fifth respondent is the Sponsoring Authority.

2. The wife of the detenu is the petitioner.

3. Mr.K.Kalaikovan, 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 147, 148, 448, 294(b), 323, 324, 363, 506(ii) IPC, which was subsequently altered to 147, 148, 448, 294(b), 323, 324, 363 and 307 of IPC in Crime No. 206 of 2022 on the file of Guruharappalli Police Station.



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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 family members of the detenu was not informed about the detention order.

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

7. Mr.R.Muniyappanaj, learned Additional Public Prosecutor, State of Tamil Nadu accepts notice for all respondents. List the captioned Habeas Corpus Petition accordingly.

gpe

[M.S.J.] [M.N.K.J.]
15.02.2023

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2. The aforementioned Admission Board order captures all essential facts and therefore, we are not setting out the same again. Be that as it may, we are using the short forms, short references and abbreviations used in the Admission Board order in this order also for the sake of convenience and clarity.

3. As would be evident from paragraph 5 of the Admission Board order, at the time of admission, learned counsel predicated his campaign against the impugned preventive detention order on the point that the family members of the detenu were not informed about the detention order but in the final hearing Board today, learned counsel drew our attention to a portion of paragraph 4 of grounds of impugned preventive detention order, which reads as follows:

'....I am aware that the co-accused Thiru.Vijaykumar @ Viji who was concerned in this case, has released on bail by the Principal Sessions Court, Krishnagiri, vide in Crl.M.P.No. 3114/2022, dt.13.12.2022....'

4. Adverting to the above portion, learned counsel submits that though the bail order of the co-accused has been relied on by the Detaining



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Authority in the grounds of impugned preventive detention order, but what has been furnished to the detenu as part of the grounds booklet (pages 306 to 308) is a bail order in a case where the alleged offence is under Section 7 read with Section 20(1) of Cigarette and Other Tobacco Products Act, 2003 and Sections 52 and 59 of Food Safety and Standards Act, 2006 and Section 328 IPC. To be noted, the ground case as set out in the grounds of impugned preventive detention order reads as follows:

'Gurubarappalli Police Station Crime No.206/2022 u/s.147, 148, 448, 294(b), 323, 324, 363, 506(ii) of Indian Penal Code @ 147, 148, 448, 294(b), 323, 324, 363, 307 of Indian Penal Code and was remanded to Judicial custody and lodged at the Sub Jail, Krishnagiri.'

5. Learned counsel for petitioner submitted that while the grounds of impugned preventive detention order refers to a bail order of a co-accused (Thiru.Vijayakumar @ Viji) in the ground case, that bail order has not been furnished to the detenu and some other bail order pertaining to the co-accused in another case has been produced, this has impaired the detenu's right to make an effective representation and it also makes it clear that there



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is non-application of mind qua the Detaining Authority in making the impugned preventive detention order is learned counsel's say.

6. In response to the above argument, learned Prosecutor submitted to the contrary and stated that that Criminal Miscellaneous Petition number and date (Crl.M.P.No.3114 of 2022, dated 13.12.2022) are correct.

7. We carefully considered the rival submissions. We are of the view that the bail order of co-accused Thiru.Vijayakumar @ Viji has been relied on by the Detaining Authority in the grounds of impugned preventive detention order but the copy has not been furnished to the detenu. This by itself is an impairment of detenu's right to make an effective representation against the impugned preventive detention order. To be noted, such a right is a constitutional guarantee ingrained under Article 22(5) of Constitution of India and this is sacrosanct. Therefore, we sustain the submission of the learned counsel for petitioner.

8. Besides the above point, the narrative thus far leaves us with the view that there is non-application of mind qua the Detaining Authority in making the impugned preventive detention order as bail order of the co-accused in the ground case has been relied on in the grounds of impugned



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preventive detention order but the bail order that was before the Detaining Authority is some other bail order of co-accused in some other case.

9. Ergo, the sequitur is captioned HCP is allowed. Impugned detention order dated 08.01.2023 bearing reference S.C.No.01/2023 made by the second respondent is set aside and the detenu Thiru.Thabaraze, aged 26 years, son of Thiru.Nowsath 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.)

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Index : Yes /No

Neutral Citation : Yes/No

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



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To

1. The Additional Chief Secretary to Government
Home, Prohibition and Excise Department
Fort St.George
Chennai – 600 009
2. The District Collector and District Magistrate
Krishnagiri District
Krishnagiri
3. The Superintendent of Police
Krishnagiri District
Krishnagiri
4. The Superintendent of Central Prison
Salem District, Salem
5. The Inspector of Police
Gurubarappalli Police Station
Krishnagiri District
6. The Public Prosecutor
Madras High Court
Chennai



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