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H.C.P.No.245 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.07.2023

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THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

H.C.P.No.245 of 2023

I.Jebadurai

.. Petitioner

Vs.

1. The State of Tamil Nadu
Rep. By Secretary to Government
Prohibition and Excise Department
Secretariat, Chennai – 600 009
2. The District Collector and District Magistrate
Chengalpattu District
Chengalpattu
3. The Superintendent of Police
Chengalpattu District
Chengalpattu
4. The Superintendent
Central Prison
Puzhal, Chennai
5. The Inspector of Police
Thirukazhukundram Police Station
Chengalpattu

..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 entire records relating to the detention of the detenu Jaising, son of Inbaraj, aged about 25 years, who was branded as GOONDA by the order of detention passed by the 2nd respondent order memo CPT No.03 of 2023 dated 08.01.2023, who is confined at Central Prison, Puzhal and set aside the same by producing the detenu or his body before this Court and set him at liberty.

For Petitioner : Mr.M.Soundar Vijay Arul Ram
For Respondents : Mr.E.Raj Thilak
Additional Public Prosecutor

ORDER

[Order of the Court was made by M.SUNDAR, J.,]

Captioned 'Habeas Corpus Petition' ['HCP' for the sake of brevity] has been filed by brother of detenu assailing a 'preventive detention order dated 08.01.2023 bearing reference CPT No.03 of 2023' [hereinafter 'impugned preventive detention order' for the sake of convenience and brevity]. To be noted, fifth respondent is the sponsoring authority and second respondent is the detaining authority as impugned preventive detention order has been made by second respondent.

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2. Impugned preventive detention order has been made under '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] on the premise that the detenu is a 'Goonda' within the meaning of Section 2(f) of Act 14 of 1982.

3. There is no adverse case. The ground case which is the sole substratum of the impugned preventive detention order is Crime No.656 of 2022 on the file of Thirukazhukundram Police Station for an alleged offence under Section 394 of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity]. Owing to the nature of the challenge to the impugned detention order, it is not necessary to delve into the factual matrix or be detained further by facts.



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4. Mr.M.Soundar Vijay Arul Ram, 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 support affidavit qua captioned HCP several points/grounds have been raised/urged but in the Final Hearing Board today, Mr.M.Soundar Vijay Arul Ram, learned counsel for petitioner predicated his campaign against the impugned preventive detention order on one point and that one point is that a very crucial and critical document viz., confession statement of the detenu has not been furnished to the detenu as part of the grounds booklet. Elaborating his argument in this regard learned counsel drew the attention of this Court to a portion of grounds of impugned preventive detention order and that portion reads as follows:

'...Meanwhile the above accused Jaising, male, aged-25, S/o.Inbaraj arrested by the Inspector of Police, Thirukazhukundram Circle on 18.12.2022 morning by 10.00 hrs at Aasan College Road Junction. The above accused admitted his offence of involvement in the above case in the Thirukazhukundram Police Station Cr.No.656/2022 u/s 394 IPC and gave his confession by 10.15 hrs before the following two independent witnesses.

1)Tr.Madaram, aged-38, S/o.Sunnaramgi, Nammali Village, Chengalpattu Taluk & District.

2)Tr.Sambath, Aged-40, S/o.Murugan, 70 Gandhi Nagar, Thazambedu Village, Thirukkalukkunram Taluk,



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Chengalpattu District.

Based on the confession given by the accused the Inspector of Police....'

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6. Learned counsel submits that the detaining authority has specifically adverted to the confession said to have been given by the detenu but the confession statement has not been furnished to the detenu as part of the grounds booklet.

7. This Court had the benefit of perusing the grounds booklet served on the detenu and there is no reason to disagree with the submission of learned counsel for petitioner.

8. As the above point turns heavily on records before us learned Prosecutor really does not have much of a say.

9. As a very crucial and critical document which has been heavily relied on by the detaining authority in the grounds of impugned preventive detention order has not been furnished to the detenu, the sacrosanct right of the detenu to make an effective representation against the impugned preventive detention order has been impaired.

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To be noted, such sacrosanct right of the detenu is a constitutional safeguard ingrained in Article 22(5) of the Constitution of India. As the sacrosanct constitutional safeguard has been infringed we have no hesitation in saying that the impugned preventive detention order is vitiated and the same deserves to be dislodged.

10. Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 08.01.2023 bearing reference CPT No.03/2023 made by the second respondent is set aside and the detenu Thiru.Jaising, aged 25 years, son of Thiru.Inbaraj, 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
mmi

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

To

1. The Secretary to Government
Prohibition and Excise Department
Secretariat, Chennai – 600 009

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2. The District Collector and District Magistrate
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Chengalpattu
3. The Superintendent of Police
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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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