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H.C.P.No.252 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.07.2023

Coram

THE HON'BLE MR.JUSTICE **M.SUNDAR**
and
THE HON'BLE MR. JUSTICE **R.SAKTHIVEL**

H.C.P.No.252 of 2023

Sri Prathan

.. Petitioner /
Brother of the detenu

VS

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

2.The Commissioner of Police /Detaining Authority
City Police Office, Huzur Road
Coimbatore City
Coimbatore - 18

3. The Superintendent of Prison
Central Prison, Coimbatore
Coimbatore District

4. State rep. By its
The Inspector of Police
R.S.Puram Police Station
Coimbatore District

.. 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 records relating to the petitioner's brother detention under Tamil Nadu Act 14 of 1982 vide detention order dated 23.01.2023 on the file of 2nd respondent made in proceedings Memo C.No.06/G/IS/2023, quash the same as illegal and consequently direct the respondents herein to produce the petitioner's brother namely P. Sri Pramoth Kumar @ Pramoth, son of Prakash, 23 years before this Court and set the petitioner's brother at liberty.

For Petitioner : Mr.W.Camyles Gandhi

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 the detenu assailing a 'preventive detention order dated 23.01.2023 bearing reference C.No.06/G/IS/2023' [hereinafter 'impugned preventive detention order' for the sake of convenience and brevity]. To be noted, fourth 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 are three adverse cases and one ground case. The ground case which constitutes substantial part of substratum of the impugned preventive detention order is Crime No.2 of 2023 on the file of R.S.Puram Police Station for alleged offence under Sections 294(b), 392 read with 397 and 506(ii) 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 preventive detention order, it is not necessary to delve into the factual matrix or be detained further by facts.

4. In the final hearing, Mr.W.Camyles Gandhi, learned counsel for petitioner and Mr.E.Raj Thilak, learned Additional Public Prosecutor for respondents are before us.



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5. A careful perusal of the grounds of impugned preventive detention order and more particularly sub-paragraph (i) of Paragraph 8 thereat, brings to light that there is a reference to a bail order in the case of one Thiru.N.Vivekanandhan @ Kunjan. To be noted, relevant portion of 8(i) of impugned preventive detention order reads as follows:

'8.....Further in Coimbatore City D-3 Podanur Police Station Crime No.37/2021 u/s.294(b), 323, 324, 427 and 506(ii) IPC (which is registered under similar section of law), bail was granted to the accused N.Vivekanandhan @ Kunjan by the court of Hon'ble District Munsif cum Judicial Magistrate, Madukkarai in C.M.P.No.34/2021 dated 22.01.2021.....'

6. The simple point is, the aforementioned bail order in N.Vivekanandhan @ Kunjan's case has not been furnished to the detenu as part of the grounds booklet.

7. The above point turns solely on records before us and therefore, learned Prosecutor has little say (no say).

8. In the light of the narrative thus far, we have no hesitation in accepting the submission that the right of the detenu to make an effective representation against the impugned preventive detention order has been impaired. To be noted, such a right is a sanctus right ingrained in Article



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22(5) of the Constitution of India. Therefore, this vitiates the impugned preventive detention order and renders it liable for being set aside.

9. Apropos, the sequitur is, captioned HCP is allowed. Impugned detention order dated 23.01.2023 bearing reference C.No.06/G/IS/2023 made by the second respondent is set aside and the detenu Thiru.P.Sri Pramoth Kumar @ Pramoth, S/o.Thiru.Prakash, aged about 23 years, 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.)
17.07.2023

Index : Yes

Neutral Citation : Yes

GPA

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



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To

WEB CLERK

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High Court, Madras.



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