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H.C.P.No.316 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.06.2023

Coram

THE HONOURABLE MR.JUSTICE **M.SUNDAR**
and
THE HONOURABLE MR.JUSTICE **R.SAKTHIVEL**

H.C.P.No.316 of 2023

Prabhu

.. Petitioner

VS

1.State of Tamil Nadu rep. By
Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George, Chennai – 9.

2.The Commissioner of Police,
Tambaram City,
Office of the Commissioner of Police,
Solinganallur, Chennai – 119.

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

4.The Inspector of Police,
Kelambakkam Police Station,
Chengalpattu 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 on the file of the second respondent in Order
No.197/BCDFGISSSV/2022 dated 16.11.2022, quash the same and
direct the respondents to produce the person or body of the detenu



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Thiru.Pradeep Kumar @ Pradeep @ Voodukoluthi, aged 21 years,
S/o.Prabhu, set him at liberty who is now detained in Central
Prison, Puzhal, Chennai.

For Petitioner : Mr.M.Jaisingh
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 02.03.2023, this Court made the following order:

"Captioned Habeas Corpus Petition has been filed in this Court on 13.02.2023 inter alia assailing a detention order dated 16.11.2022 bearing reference BCDFGISSSV No.197/2022 made by 'second respondent' [hereinafter 'Detaining Authority' for the sake of convenience and clarity]. To be noted, fourth respondent is the Sponsoring Authority.

2. Father of the detenu is the petitioner.

3. Mr.M.Jaisingh, learned counsel on record for habeas corpus petitioner is before us. Learned counsel for petitioner submits that ground case qua the detenu is for



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alleged offence under Section 302 of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] in Crime No.375 of 2022 on the file of T-19, Kelambakkam Police Station.

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, Sandoffenders, 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 the detenu has studied till 7th standard only and Page No.63 of the booklet is not clear to read and understand which prevented the detenu from making effective representation to the Authority concerned.

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 02.03.2023 Admission listing shall be read as an integral part and parcel of this order which means that the short forms, short references and



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abbreviations used in the order in the Admission listing shall be used in the instant order also.

3. There are two adverse cases. The ground case which constitutes substantial part of substratum of the impugned detention order is Crime No.375 of 2022 on the file of T-19 Kelambakkam Police Station for the alleged offence under Section 302 of IPC. 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.

4. Mr.M.Jaisingh, 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, very many points/grounds have been urged/raised but in the hearing, learned counsel for petitioner predicated his campaign against the impugned preventive detention order on one point and that one point turns on Section 8(1) of Act 14 of 1982, which reads as follows:

'8. Grounds of order of detention to be disclosed to persons affected by the order.- (1)



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When a person is detained in pursuance of a detention order, the authority making the order shall, as soon as may be, but not later than five days from the date of detention, communicate to him the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order to the State Government. '

6. Adverting to the aforementioned provision of law, learned counsel submitted that the date of impugned preventive detention order is 16.11.2022 and date of formal arrest pursuant to impugned preventive detention order is 16.11.2022 (served on the detenu on the same day i.e., on 16.11.2022) but the 'grounds on which the impugned preventive detention order has been made' was served on the detenu only on 22.11.2022. Learned counsel submits that this is a clear infraction of the statutory requirement qua Section 8(1) of Act 14 of 1982 and such infraction of a statutorily imperative requirement is fatal qua impugned preventive detention order is learned counsel's further say. We perused the impugned preventive detention order and grounds of detention. A scanned reproduction of the detention order and a page containing date regarding supply of same to detenu are as follows:



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RECEIVED No. 197 of 2023 Date: 16.1.2023

DETENTION ORDER

Whereas I, A. Arunima, P.S., Commissioner of Police, Tambaram City, am satisfied that with respect to the person known as Thiru Pradeep Kumar & Pradeep & Vonda Koluthi, male, aged 21, S/o. Prabhu, No. 423, Gandhi Nagar 2nd Street, Padur Village, Chengalpattu District, he is a Goonda as contemplated under Section 2(f) of the Tamil Nadu Act 11 of 1982 and that with a view to preventing this person acting in any manner prejudicial to the maintenance of public order, it is necessary to make the following order:

Now, therefore in exercise of the powers conferred on me by Sub Section (1) of Section 2 of the Tamil Nadu Government of Dangerous Activities of Bootleggers, Cyber Law Offenders, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sexual Offenders, Social Offenders, Slum Dwellers and Violators of the Tamil Nadu Act 11 of 1982 and with orders issued by the Government in G.O.M.D.No. 199, Extra, Prohibition and Excise (KV) Department dated 12th October 2017 under Sub Section (2) of Section 2 of the said Act, I hereby direct that the said Goonda Thiru Pradeep Kumar & Pradeep & Vonda Koluthi, S/o. Prabhu be arrested and kept in custody at Central Prison, Pudukottai, Chennai.

1. Name: TP
2. Date of birth: 16.1.2002
3. Date of this order: 16.1.2023
4. Date of this order: 16.1.2023

Commissioner of Police, Tambaram City

TPDA: 3865
DATED: 16/1/2023

To
Thiru Pradeep Kumar & Pradeep & Vonda Koluthi, male, aged 21, S/o. Prabhu, No. 423, Gandhi Nagar 2nd Street, Padur Village, Chengalpattu District
(Already arrested in T-19, Kozhikode, Police Station, Crime No. 378/2022 and lodged in District Prison, Chengalpattu as inmate prisoner)

Through the Registrar of Police, T-19, Kallakudi, Police Station, for service and return.

Copy to: The Principal Secy to Govt., Home, Prohibition & Excise, Dept.
The Director General of Police, Tamil Nadu, Chennai
The Additional Director General of Police, Prohibition, Chennai
The State Jailors, Central Prison, Pudukottai, Chennai

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Similarly, a typical page in the grounds of detention containing date regarding date of supply of same to detenu is as follows:



7. We remind ourselves that dealing with infraction of Section 8(1) of Act 14 of 1982, this Bench in the case of ***M.Shylaja Vs.The Additional Chief Secretary to Government and others*** reported in ***2023/MHC/193*** has held that such infraction would lead to dislodgement of impugned preventive detention order.

8. In the light of narrative, discussion and dispositive reasoning supra, we have no hesitation in saying that the impugned preventive detention order deserves to be dislodged in



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the case on hand.

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9. Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 16.11.2022 bearing reference BCDFGISSSV No.197/2022 made by the second respondent is set aside and the detenu Thiru.Pradeep Kumar @ Pradeep @ Voodu Koluthi, aged 21 years, son of Thiru.Prabhu, 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.)
26.06.2023

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,
Home, Prohibition and Excise Department,
Fort St. George, Chennai – 9.
- 2.The Commissioner of Police,
Tambaram City,
Office of the Commissioner of Police,
Solingallur, Chennai – 119.
- 3.The Superintendent,
Central Prison, Puzhal, Chennai.
- 4.The Inspector of Police,
Kelambakkam Police Station,
Chengalpattu District.



5. The Public Prosecutor,
High Court, Madras.

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

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