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H.C.P.No.265 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.07.2023

CORAM

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

H.C.P.No.265 of 2023

Deepa

..
Petitioner

Vs.

- 1.State of Tamil Nadu
Rep by The Secretary to Government,
Prohibition & Excise Department,
Fort.St.George, Chennai-600 009.
- 2.The Commissioner of Police,
Tambaram City.
- 3.The Superintendent,
Central Prison, Puzhal, Chennai – 66.
- 4.The Inspector of Police,
T9 Maraimalai Nagar Police Station,
Chengalpattu.

.. 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 22.12.2022 passed by the 2nd respondent in the proceedings in BCDFGISSSV No.217 of 2022 in TPDA No.3989 and to quash the same, consequently direct the respondents herein to produce the petitioner's husband namely

Page Nos.1/8



H.C.P.No.265 of 2023

S.Manikandan @ Sullan Mani, son of Sundaram, aged about 33 years, who is presently undergoing detention in Central Prison, Puzhal, Chennai as Goonda under Section 3(1) of the Tamilnadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamilnadu Act 14 of 1982) before this Court and set him at liberty forthwith.

For Petitioner : Mr.R.Rajadurai
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 21.02.2023, 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 22.12.2022 bearing reference BCDFGISSSV No.217 of 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. Wife of the detenu is the petitioner.

3. Mr.R,Rajadurai, learned counsel on record for habeas



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H.C.P.No.265 of 2023

corpus petitioner is before us. Learned counsel for petitioner submits that ground case qua the detenu is for alleged offences under Sections 341, 294(b), 323, 324, 307, 506(ii) of 'Indian Penal Code, 1860 (Act 45 of 1860)' ['IPC' for brevity] in Crime No.566 of 2022 on the file of T-9, Maraimalai Nagar 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, 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 some of the pages in the booklet are illegible, which prevented the detenu 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.'



H.C.P.No.265 of 2023

2. The aforementioned order made in the 21.02.2023 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 are five adverse cases. The ground case which constitutes substantial part of substratum of the impugned preventive detention order is Crime No.566 of 2022 on the file of T-9 Maraimalai Nagar Police Station for alleged offences under Sections 341, 294(b), 323, 324, 307 and 506(ii) 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.R.Rajadurai, 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 have been raised/urged. In the Admission Order, as would be evident



H.C.P.No.265 of 2023

from paragraph 5 of the 21.02.2023 order (reproduced supra), challenge to the impugned preventive detention order was predicated on the ground that some pages in the grounds booklet are illegible and this prevented the detenu from making an effective representation. Elaborating on this point projected in the Admission Board, learned counsel drew our attention to pages 473 to 477 of the grounds booklet. To be noted, these pages contain a bail order dated 23.04.2021 made in CrI.M.P. No.2440 of 2021 on the file of Principal Sessions Judge of Kancheepuram District at Chengalpattu, which has been relied on by the detaining authority to arrive at subjective satisfaction qua imminent possibility of detenu being enlarged on bail. We had the benefit of perusing the grounds booklet served on the detenu and we find that pages 475 and 477 are not readable at all. As it is a bail order which has been relied on by the detaining authority to arrive at subjective satisfaction qua imminent possibility of detenu being enlarged on bail, we have no hesitation in accepting the submission of learned counsel for petitioner that the detenu's right to make an effective representation against the impugned preventive detention order has been hampered. To be noted, such right of the detenu i.e., right of the detenu to make an effective representation against a preventive detention order is a constitutional



H.C.P.No.265 of 2023

safeguard ingrained in Clause 5 of Article 22 of the Constitution of India.

6. The narrative thus far brings to light that in the case on hand, aforementioned constitutional safeguard qua Article 22 (5) of the Constitution of India has been impaired. This means that impugned preventive detention order is vitiated and it deserves to be dislodged.

7. Apropos, the sequitur is, captioned HCP is allowed. Impugned detention order dated 22.12.2022 bearing reference BCDFGISSSV No.217/2022 made by the second respondent is set aside and the detenu Thiru.S.Manikandan @ Sullan Mani, aged 33 years, son of Thiru.Sundaram, 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.)
03.07.2023

Index : Yes / No
Neutral Citation : Yes / No
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Page Nos.6/8



H.C.P.No.265 of 2023

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

To

- 1.The Secretary to Government,
Prohibition & Excise Department,
Fort.St.George, Chennai-600 009.
- 2.The Commissioner of Police,
Tambaram City.
- 3.The Superintendent,
Central Prison, Puzhal, Chennai – 66.
- 4.The Inspector of Police,
T9 Maraimalai Nagar Police Station,
Chengalpattu.
- 5.The Public Prosecutor,
High Court, Madras.



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H.C.P.No.265 of 2023

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

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H.C.P.No.265 of 2023

03.07.2023

Page Nos.8/8