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H.C.P.No.296 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.06.2023

Coram

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

H.C.P.No.296 of 2023

E.Thamizhi

.. Petitioner /
wife of detenu

VS

- 1.The State of Tamil Nadu
rep.by the Secretary to Government
Home, Prohibition and Excise Department,
Fort St. George, 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 – 600 066
5. The Inspector of Police
E3 Sadras Police Station
Chengalpattu 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 produce the body of the detenu by name Thiru Elangovan @ Sathish aged 29, son of Bhoopathi, presently confined at Central Prison, Puzhal, Chennai before this Court and set him at liberty forthwith, after calling for the records pertaining to the detention order dated 21.12.2022 made in C.P.T.No.72 of 2022 passed by the 2nd respondent and quash the same.

For Petitioner : Mr.A.Saravanan

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 wife of detenu assailing a 'preventive detention order dated 21.12.2022 bearing reference CPT No.72/2022' [hereinafter 'impugned 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 detention order has been made by second respondent.



2. When the captioned HCP was listed for admission before this Court, proceedings/orders dated 01.03.2023 was made in the 'Admission Board' and the same reads as follows:

'Captioned Habeas Corpus Petition (for brevity, 'HCP') has been filed in this Court on 15.02.2023 inter-alia assailing a detention order dated 21.12.2022 bearing Reference Number in C.P.T.No.72 of 2022 made by the 'second respondent' (hereinafter called as 'Detaining Authority' for the sake of convenience and clarity). To be noted, fifth respondent is the Sponsoring Authority.

2. Wife of the detenu is the petitioner.

3. Ms.R.Madubala, learned counsel on record for habeas corpus petitioner, is before us. Learned counsel for the petitioner submits that the ground case qua the detenu, is for the alleged offences under Sections 294(b), 323, 429, 506 (Part-2) and 307 of the Indian Penal Code (45 of 1860) (for short, IPC for the sake of convenience and clarity), read with Section 3(1) of the Tamil Nadu Public Property (Prevention of Damage and Loss) Act, 1992 and Section 4 of the Tamil Nadu Prohibition of Harassment of Women Act, 2002, in Crime No.321 of 2022 on the file of Sadras Police Station, Chengalpet District.

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



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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 called as 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 intimation of arrest has not been communicated to the detenu's family members, which is in violation of Article 22(1) of the Constitution of India.

6. Prima-facie case made out for admission of the HCP. Accordingly, Admit, Issue Rule Nisi, Call for records, in four weeks.

7. Mr.R.Muniyappa Raj, learned Additional Public Prosecutor, State of Tamil Nadu, High Court, Madras, accepts notice for all the respondents. 8. List the captioned HCP accordingly. '

3. The aforementioned proceedings/orders made in the 'Admission Board' captures short facts essential and imperative for appreciating this order and therefore without setting out the same again, we deem it appropriate to say that aforementioned proceedings shall be read as an integral part and parcel of this order.



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4. There are two adverse cases. The ground case which constitutes substantial part of substratum of the impugned preventive detention order is Crime No.321 of 2022 on the file of Sadras Police Station for alleged offences under Sections 294(b), 323, 429, 506(ii), 307 of IPC read with Section 3(1) of TNPPDL Act, 1992 and Section 4 of TNPHW Act, 2002. 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.

5. Mr.A.Saravanan, learned counsel on record for petitioner and Mr.E.Raj Thilak, learned State Additional Public Prosecutor for all respondents are before us.

6. In the support affidavit qua captioned HCP, multiple points have been raised but in the final hearing, learned counsel drew our attention to page 19 of the grounds booklet which is a statement given by a witness in the adverse case and submitted that the same is not legible.

7. We had the benefit of perusing the grounds booklet and we have no reason to disagree with the learned counsel for petitioner. Considering



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the nature of the document, we find that the detenu's right to make an effective representation qua impugned preventive detention order is impaired. To be noted, such right to make an effective representation is a constitutional safeguard ingrained in Article 22(5) of the Constitution. As there is impairment of this constitutional safeguard, the sequitur is the impugned detention order deserves to be dislodged.

8. Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 21.12.2022 bearing reference CPT No.72/2022 made by the second respondent is set aside and the detenu Thiru.Elangovan @ Sathish, aged 29 years, son of Thiru.Bhoopathi, 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.)
28.06.2023

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, Puzhal, Chennai.



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To

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

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