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H.C.P.No.280 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.280 of 2023

Muthuraman

.. Petitioner

Vs.

State rep. By

- 1.The Secretary to Government,
Home, Prohibition & Excise Department,
Secretariat, Fort St.George, Chennai-600 009.
2. The Commissioner of Police,
Salem City.
- 3.The Superintendent of Prison,
Central Prison, Salem.
- 4.The Inspector of Police,
Annadanapatty Police Station,
Salem City.

.. 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
in C.M.P. No.163/Goonda/Salem City/2022 dated 22.12.2022 on the
file of the Commissioner of Police, Salem City, the second respondent

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herein and quash the same as illegal and direct the respondents to produce the detenu Karthick @ Picha Karthick @ Chinna Sollisan, S/o.Muthuraman, aged about 24 years, now confined at Central Prison, Salem, before this Court and set him at liberty.

For Petitioner : Ms.S.Sengkodi
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 23.02.2023, this Court made the following order:

'Captioned Habeas Corpus Petition has been filed in this Court on 16.02.2023 inter alia assailing a detention order dated 22.12.2022 bearing reference C.M.P.No.163/Goonda/Salem City/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.Ms.S.Sengkodi, learned counsel on record for habeas corpus petitioner is before us. Learned counsel for petitioner submits that ground case qua the detenu is for alleged offences under Sections 341, 392 read with 397, 506 (ii) of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] in Crime No.579 of 2022 on the file of N1, Annadanapatty Police



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Station, Chennai.

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 family members were not informed about the detention.*

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 23.02.2023 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 two adverse cases. The ground case which constitutes substantial part of substratum of the impugned preventive detention order is Crime No.579 of 2022 on the file of Annadanapatty Police Station for alleged offences under Sections 341,

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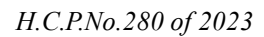


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392 r/w 397 and 506(ii) IPC. Owing to the nature of the challenge to the impugned detention order, it is not necessary to delve into the factual matrix or be detained further by facts.

4. Ms.S.Sengkodi, 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 Admission Board, the point that family members of the detenu were not informed about detention of the detenu was projected, however, in the final hearing Board, Ms.S.Sengkodi, learned counsel for petitioner drew our attention to the detention order i.e., impugned preventive detention order and pointed out that the date is blank. A scanned reproduction of the impugned preventive detention order is as follows:



Dated: 12.2022

Whereas, I, NAJMUL HODA, L.P.S., Commissioner of Police, Salem City on the materials placed before me, am satisfied that **Karthick @ Picha Karthick @ Chinna Sollisan, age 24, S/o. Muthuraman, 161/111, Amman Nagar, Ambal Er Road, Dadagapatty, Salem** is a "GOONDA" as contemplated under section 2 (f) of the Tamil Nadu Act 14 of 1982, and

Whereas the aforesaid individual is found indulging in activities prejudicial to the maintenance of public order and public peace and details of which are set out in detail in the grounds of detention.

Now, therefore, in exercise of the powers under sub section (1) of section 3 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 14 of 1982) read with the order issued by the Government in G.O.(D).No.290, Home, Prohibition and Excise (XVI) Department, dated 13.10.2022 under sub section (2) of section 3 of the said act, it is ordered that **Karthick @ Picha Karthick @ Chinna Sollisan**, age 24, 3/o. **Muthuraman**, 161/111, **Amman Nagar, Ambal Eri Road, Dadagapaty, Salem** who is a "Goonda" be detained at the Central Prison, Salem.

Given under my hand and seal of this office, this the 25 day of December, 2022.



To

Karthick @ Picha Karthick @
Chinna Sollisan, age 24,
S/o. Muthuraman,
161/111, Amman Nagar,
Ambal Eri Road, Dadagapatty,
Salem.

(ii) IPC and now under judicial custody at Central Prison, Salem as remand prisoner]

Through The Summer Interment: Central Illinois 1911-1912 236



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6. The aforementioned scanned reproduction will show that only the month and year have been mentioned and the date is incomplete. We find that the detaining authority has signed the impugned preventive detention order on 22.12.2022 and it has been served on the detenu on the same day i.e., 22.12.2022 but this does not save the day for the respondents as delay if any between the date on which the impugned preventive detention order was made/date of detention pursuant to impugned preventive detention order and the date on which grounds on which impugned preventive detention order is made was served on the detenu will be fatal to the impugned preventive detention order in the light of Section 8(1) of Act 14/1982. It may not be necessary to go that far and it will suffice to say that impugned preventive detention order smacks of non-application of mind owing to being signed by detaining authority with a blank qua date and this *per se* vitiates the impugned preventive detention order.

7. In this view of the matter, the date being blank in the aforesaid manner is also clearly an infraction qua the detenu's right to make an effective representation against the impugned preventive



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detention order. To be noted, such a right of the detenu is a constitutional safeguard ingrained in Clause 5 of Article 22 of the Constitution of India. Such constitutional safeguard being impaired results in impugned preventive detention order getting vitiated and becoming liable for dislodgement.

8. Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 22.12.2022 bearing reference C.M.P. No.163/Goonda/Salem City/2022 made by the second respondent is set aside and the detenu Thiru.Karthick @ Picha Karthick @ Chinna Sollisan, aged 24 years, son of Thiru.Muthuraman 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
mmi

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

To
1.The Secretary to Government,
Home, Prohibition & Excise Department,
Secretariat, Fort St.George, Chennai-600 009.

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2. The Commissioner of Police,
Salem City.
3. The Superintendent of Prison,
Central Prison, Salem.
4. The Inspector of Police,
Annadanapatty Police Station, Salem City.
5. The Public Prosecutor,
High Court, Madras.



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

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