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HCP No.305 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.04.2023

Coram

THE HONOURABLE MR.JUSTICE M.SUNDAR
and
THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

H.C.P. No.305 of 2023

P.Prasanth

.. Petitioner

Vs.

1. The State of Tamil Nadu
Rep. by its Chief 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 Inspector of Police,
Chengalpattu Taluk Circle Police Station,
Chengalpattu District.
5. The Superintendent of Prison,
Central Prison II, Puzhal, Chennai – 66.

.. 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 pertaining to CPT No.39/2022 dated 24.07.2022 on the file of the second respondent herein and set aside the same and direct the respondents herein to produce the petitioner Prasanth, Son of Periyar,



HCP No.305 of 2023

aged 24 years, now confined in the Central Prison, Puzhal, Chennai before this Court and set him at liberty.

For Petitioner : Mr.Charles Kamalesh M.Appaji
For Respondents : Mr.R.Muniyapparaj
Additional Public Prosecutor
Assisted by Mr.M.Sylvester John

ORDER

[Order of the Court was made by M.NIRMAL KUMAR, J.]

This order will now dispose of captioned 'Habeas Corpus Petition' ('HCP' for the sake of brevity).

2. When the captioned HCP was listed in the Admission Board, this Court vide order dated 01.03.2023 admitted the captioned HCP and issued Rule nisi. A scanned reproduction of the order dated 01.03.2023 is as follows:



HCP No.305 of 2023

WEB COPY

H.C.P.No.305 of 2023

H.C.P.No.305 of 2023

M.SUNDAR, J

and

M.NIRMAL KUMAR, J

(The Order of the Court was made by M.Sundar, J)

Captioned Habeas Corpus Petition (for brevity, 'HCP') has been filed in this Court on 22.02.2023 *inter-alia* assailing a detention order dated 24.07.2022 bearing Reference Number in C.P.T.No.39 of 2022 made by the 'second respondent' (hereinafter called as 'Detaining Authority' for the sake of convenience and clarity). To be noted, fourth respondent is the Sponsoring Authority.

2. The detenu is the petitioner.

3. Mr.C.K.M.Appaji, 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 offence under Section 302 of the Indian Penal Code (for brevity, 'IPC') and subsequently altered into one under Sections 302 and 396 IPC in Crime No.326 of 2022 on the file of the Chengalpattu Taluk Police Station..

Page No.1/3



HCP No.305 of 2023

WEB COPY

H.C.P.No.305 of 2023

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 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 family members of the detenu was not informed about the arrest of the detenu.

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


(M.S., J) (M.N.K., J)
01.03.2023

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Page No.2/3



HCP No.305 of 2023

WEB COPY

3. Learned counsel for petitioner predicated his campaign against the impugned detention order on one short point and that is, in the Arrest memo it is recorded that the arrest of the detenu was informed to his brother one Elumalai through his mobile bearing No.7867875836 by way of SMS. He further submitted that this would not be a communication of arrest, more so, there is no statement recorded from the said Elumalai to confirm as to whether he received the arrest intimation, thereby hampered the right of the detenu to make an effective representation.

4. The learned Additional Public Prosecutor submitted that the petitioner has not made any such representation now putforth before this Court. Hence, the above contention may not be considered.

5. The Hon'ble Division Bench of this Court in the case of **"Akilandeswari Vs. State, rep. by Secretary to Government, Home, Prohibition and Excise Department, Chennai-600009,** reported in **2008 (3) MLJ (Crl.) 744"**, held as follows:

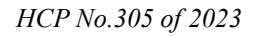
"5. Though the learned Additional Public Prosecutor has made an attempt to justify by stating



that the family members were intimated through telegrams, he has not placed any material to satisfy this Court as to whether any telegram was sent and the same was acknowledged either by the family members or relatives of the detenu. A right of intimation to the relatives or family members of the detenu encompasses itself the fundamental right guaranteed under Article 22(5) of the Constitution of India to make a representation to the Detaining Authority or the State Government, as the case may be. In the event the arrest is not intimated, the detenu would not be in a position to make any such representation and in that context, failure on the part of the Detaining Authority would amount to deprivation of the right of the detenu to make an effective representation guaranteed under Article 22(5) of the Constitution of India. On the facts of this case, a specific averment has been made that the intimation was not given. We also find that the said averment has not been controverted in the Counter Affidavit. Though the learned Additional Public Prosecutor submitted that the family members of the detenu were informed of the arrest through telegram, there are no materials placed before us to substantiate the said contention. Further, the copy of the telegram has also not been furnished to the detenu. In the absence of the same, we are unable to accept the contention of the learned Additional Public Prosecutor that the family members or the relatives of the detenu were informed of the arrest. Under these circumstances, the detention order is vitiated."

6. Following ***Akilandeswari*** Case (cited supra), this Court in the case of "***Ganesh @ Lingesan Vs. State of Tamil Nadu and another***" reported in ***2012 (3) MWN (Cr.) 315 DB***", in paragraph No.10, held as follows:

"10. *"No man shall be deprived of his life and liberty*



7. In this case, the arrest intimation is through Short Message Service (SMS). The reason given is not acceptable, proper intimation to be given to the detenu and the detenu must know the reason for his arrest. Further, right of the detenu to make an effective representation qua the preventive detention order is a Constitutional safeguard ingrained in Clause (5) of Article 22 of the Constitution of India. In the light of the narrative thus far, this Constitutional safeguard is hampered. The sequitur is, the impugned preventive detention order deserves to be dislodged.

8. Ergo, the sequitur is, captioned HCP is allowed and the



HCP No.305 of 2023

detention order dated 24.07.2022 bearing reference CPT No.39/2022 made by the second respondent is set aside and the detenu Thiru.Prasanth, male, aged 24 years, son of Thiru.Periyan is directed to be set at liberty forthwith unless required in connection with any other case. There shall be no order as to costs.

(M.S.,J.) (M.N.K.,J.)
17.04.2023

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.

To

1. The Chief 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.
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6. The Public Prosecutor, High Court, Madras.



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**M.SUNDAR, J.,
and
M.NIRMAL KUMAR, J.,**

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