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H.C.P.No.341 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.04.2023

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

H.C.P.No.341 of 2023

V.Murugaveni

.. Petitioner

Vs

1.The Secretary to the Government,
Home, Prohibition and Excise Department,
Chennai – 600 009.

2.The District Magistrate and District Collector,
Dharmapuri District, Dharmapuri.

3.The Superintendent of Prison,
Central Prison, Salem.

4.The Inspector of Police,
Pennagaram Police Station,
Dharmapuri District.

.. Respondents

Petition filed under Article 226 of the Constitution of India
praying for issuance of a writ of habeas corpus directing the
respondents to produce the body of the detenu Mr.Viji, son of
Harikrishnan, male, aged about 25 years, who is detained in Central



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Prison, Salem before this Court and pass an order to call for the records of detention order passed by the second respondent in S.C.No.13/2022 dated 25.05.2022 against the petitioner's husband Mr.Viji, son of Harikrishnan, and set aside the same and set the detenu at liberty.

For Petitioner	:	Mr.M.Mohamed saifulla for Mr.K.Anand
For Respondents	:	Mr.R.Muniyapparaj Additional Public Prosecutor assisted by Mr.M.Sylvester John

ORDER

[Order of the Court was made by **M.SUNDAR, 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 08.03.2023 admitted the captioned HCP and issued Rule nisi. A scanned reproduction of the order dated 08.03.2023 is as follows:



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M.SUNDAR, J.,

and

M.NIRMAL KUMAR, J.,

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

Captioned Habeas Corpus Petition has been filed in this Court on 28.02.2023 *inter alia* assailing a detention order dated 25.05.2022 bearing reference S.C.No.13/2022 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.K.Anand, learned counsel on record for petitioner is before us. Learned counsel for petitioner submits that ground case qua the detenu has been registered initially for alleged offences under Section 392 of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] and subsequently altered as Section 392 read with Section 397 of IPC in Crime No.89 of 2022 on the file of Pennagaram Police Station.

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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 not legible 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.


[M.S.J.,]


[M.N.K.J.,]

08.03.2023

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3. The aforementioned proceedings made at the time of admission captures the factual matrix in a nut shell and therefore the aforementioned proceedings shall be read as an integral part and parcel of this order. To be noted the 'detention order dated 25.05.2022 bearing reference S.C.No.13/2022' made by the detaining authority shall be referred to as 'impugned detention order' for the sake of convenience and clarity.

4. In the Admission Board, though the case was projected on the ground that some pages in the grounds booklet are not legible, in the final hearing today, Mr.M.Mohamed Saifulla, learned counsel representing the counsel on record for petitioner drew our attention to paragraph 4 of the impugned preventive detention order and that portion of paragraph 4 relating to the point that is being urged reads as follows:

'4.I am aware that Thiru.Viji was produced before the Judicial Magistrate, Pennagaram, on 22.04.2022 in Pennagaram, on 22.04.2022 in Pennagaram Police Station Crime No.89/2022 u/s 392 Indian Penal Code @ 392 r/w 397 Indian Penal Code, and was remanded to judicial custody and lodged at the Sub Jail, Dharmapuri, as a remand prisoner till 06.05.2022.....'



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5. Adverting to the aforementioned portion of paragraph 4 of the impugned preventive detention order, learned counsel for petitioner submitted that the remand order has not been furnished to the detenu as part of the grounds booklet.

6. We had the benefit of perusing the grounds booklet served on the detenu. As the point turns heavily on records, learned Prosecutor really does not have much of a say. The fact of the matter remains that the remand order has not been provided to the detenu as part of the grounds booklet. We have no difficulty in accepting the argument or in other words the extension of the argument that this non-furnishing of the remand order to the detenu has impaired the detenu's right to make effective representation. We also remind ourselves that the detenu's right to make effective representation qua preventive detention order is a constitutional guarantee ingrained in Article 22(5) of the constitution of India. As sanctus of constitutional guarantee has been subjected to infraction, the impugned preventive detention order deserves to be dislodged.

7. Apropos, the sequitur is, captioned HCP is allowed. Impugned



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detention order dated 25.05.2022 bearing reference S.C.No.13/2022 made by the second respondent is set aside and the detenu Thiru.Viji, aged about 25 years, son of Thiru.Harikrishnan, 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.) (M.N.K.,J.)
25.04.2023

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, Salem.

To

- 1.The Secretary to the Government,
Home, Prohibition and Excise Department,
Chennai – 600 009.
- 2.The District Magistrate and District Collector,
Dharmapuri District, Dharmapuri.
- 3.The Superintendent of Prison,
Central Prison, Salem.
- 4.The Inspector of Police,
Pennagaram Police Station,
Dharmapuri District.
- 5.The Public Prosecutor,
High Court, Madras.

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



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