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H.C.P.No.411 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.07.2023

Coram

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

H.C.P.No.411 of 2023

G.Sureka

W/o.K.N.Gopi

.. Petitioner /Wife of Detenu

VS

1.State of Tamil Nadu represented by
The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai – 600 009.

2.The Commissioner of Police,
Tambaram City,
Office of the Commissioner of Police,
Sholinganallur, Chennai-119.

3. The Superintendent,
Central Prison,
Puzhal, Chennai – 66.

4. The Inspector of Police,
T-2, Chromepet Police Station,
Chennai – 600 044.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying
for issuance of a writ of habeas corpus calling for the records relating to



H.C.P.No.411 of 2023

the impugned order of detention dated 24.02.2023 in No.04/BCDFGISSSV/2023 passed by the second respondent herein and quash the same and consequently direct the respondents to produce the detenu K.N.Gopi, Male aged 42 years, S/o.Kutty Nagooran, now confined in Central Prison, Puzhal, Chennai this Hon'ble Court and set him at liberty.

For Petitioner : Mr.R.Narayanan
for Mr.K.Prasanthan

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 before this Court in the Admission Board on 23.03.2023, this Court made the following order:

'Captioned Habeas Corpus Petition has been filed in this Court on 09.03.2023 inter alia assailing a detention order dated 24.02.2023 bearing reference No.BCDFGISSSV No.04//2023 made by 'second respondent' [hereinafter 'Detaining Authority' for the sake of convenience and clarity]. To be noted, fourth respondent is the Sponsoring Authority.



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H.C.P.No.411 of 2023

2. *To be noted, wife of the detenu is the petitioner.*

3. *Mr.K.Prasanthan, 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 Section 3 of the 'Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003' ['TNPCEI Act' for the sake of brevity] and Sections 342 and 506(i) of 'Indian Penal Code, 1860 (Act 45 of 1860)' ['IPC' for brevity] altered to Section 3 of TNPCEI Act and Sections 342, 294(b) and 506(ii) of IPC in Crime No.52 of 2023 on the file of T-2, Chrompet 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 the detention order was not intimated to the relatives or friends of the detenu depriving their right of making an effective representation before the authorities.*

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*



WEB COPY



H.C.P.No.411 of 2023

respondents. List the captioned Habeas Corpus Petition accordingly.'

2. The aforementioned order made in the 23.03.2023 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 three adverse cases and one ground case. The ground case which constitutes substantial part of substratum of the impugned preventive detention order is Crime No.52 of 2023 on the file of T-2 Chrompet Police Station for alleged offences under Section 3 of 'The Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003' [hereinafter 'TNPCEI Act' for convenience and clarity] and Sections 342 and 506(i) of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] @ Section 3 of TNPCEI Act and Sections 342, 294(b) and 506(ii) of IPC. Owing to the nature of the challenge to the impugned preventive detention order, it is not necessary to delve into the factual matrix or be detained further by facts.



H.C.P.No.411 of 2023

4. Mr.R.Narayanan, learned counsel representing counsel on record for petitioner and Mr.E.Raj Thilak, learned State Additional Public Prosecutor for all respondents are before us.

5. Learned counsel for petitioner, in the admission board projected the argument that the detention order was not intimated to the relatives or friends of the detenu but in the final hearing board, learned counsel predicated his campaign against impugned preventive detention order on one point and that one point turns on supply of illegible copies in the grounds booklet. Elaborating on the submission, learned counsel submitted that in pages 73 to 75 of the grounds booklet, the right side of the complaint copy are not readable, which prevented the detenu from making an effective representation.

6. The aforementioned point turns heavily on records and therefore learned Additional Public Prosecutor really does not have much of a say.

7. This Court had the benefit of perusing the grounds booklet and this Court is of the view that the aforementioned pages which contain the complaint copy made by one G.Manivannan (second adverse case), are not readable. Scanned reproduction of pages 73 and 75 are as follows:



H.C.P.No.411 of 2023

This means that right of the detenu to make an effective representation as against the impugned preventive detention order has been impaired. Such a right is sanctus constitutional right ingrained in Article 22(5) of the Constitution of India. This constitutional right of the detenu has been subjected to infraction. This has vitiated the impugned preventive detention order. Therefore, the impugned preventive detention order is liable to be dislodged.

8. Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 24.02.2023 bearing reference No.04/BCDFGISSSV/2023 made by the second respondent is set aside and the detenu Thiru.K.N.Gopi, aged 42 years, son of Thiru.Kutty Nagooran, 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.)
24.07.2023

Index : No

Neutral Citation : No

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



H.C.P.No.411 of 2023

To

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H.C.P.No.411 of 2023

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

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H.C.P.No.411 of 2023

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