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H.C.P.No.398 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.06.2023

Coram

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

H.C.P.No.398 of 2023

A.Vignesh Kumar

.. Petitioner

VS

1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai – 9.

2.The Commissioner of Police,
Greater Chennai, Vepery, Chennai – 7.

3.The Inspector of Police,
Team I, EDF-1, Central Crime Branch,
Vepery, Chennai – 7.

4.The Superintendent of Prison,
Central Prison, Puzhal, Chennai.

.. 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 connection with the order of detention passed by the second respondent dated 30.11.2022 in Memo No.443/BCDFGISSSV/2022 against the petitioner's uncle Jayaseelan, son of Savarimuthu, aged about 63 years, who is confined at Central Prison, Puzhal, Chennai and set aside the same and direct the respondents to produce the detenu before this Court and set him at liberty.



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For Petitioner : Mr.V.Paarthiban
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 brother-in-law of detenu assailing a 'preventive detention order dated 30.11.2022 bearing reference No.443/BCDFGISSSV/2022' [hereinafter 'impugned detention order' for the sake of convenience and brevity]. To be noted, third respondent is the sponsoring authority and second respondent is the detaining authority as impugned detention order has been made by second respondent.

2. Impugned detention order has been made under '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] on the premise that the detenu is a 'Goonda' within the meaning of Section 2(f) of Act 14 of 1982.



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3. There is one adverse case. The ground case which constitutes substantial part of substratum of the impugned detention order is Central Crime Branch – I Crime No.221 of 2022 for the alleged offences under Sections 406, 420 r/w 34 of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity]. 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. Mr.V.Paarthiban, 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 support affidavit qua captioned HCP, several points have been urged/raised but in the final hearing today, Mr.V.Paarthiban, learned counsel on record for petitioner predicated his campaign against the impugned preventive detention order on the point that subjective satisfaction arrived at by the detaining authority qua imminent possibility of detenu being enlarged on bail is impaired. Learned counsel drew the attention of this Court to the grounds of detention and submitted that the grounds of detention



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says that the special report from the sponsoring authority (third respondent) has been relied on and the same is at pages 531 and 533 of the grounds booklet. Learned counsel pointed out that the special report of the sponsoring authority is self-serving.

6. Be that as it may, more important aspect of the matter is, the special report does not contain date. Even the signature of the sponsoring authority does not bear a date. This means that it is not clear as to whether the special report is prior to the date of impugned preventive detention order or after the date of the impugned preventive detention order. To be noted, date of impugned preventive detention order is 30.11.2022 and the same was served on the detenu on 01.12.2022 but the grounds have been served on the detenu only on 03.12.2022. Therefore, the benefit of doubt has to be given to the detenu. If the benefit of doubt as regards the date of special report is given to the detenu, it follows as a sequitur that the subjective satisfaction arrived at by the detaining authority qua imminent possibility of detenu being enlarged on bail is impaired. Further sequitur is, impugned preventive detention order deserves to be dislodged.

7. Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 30.11.2022 bearing reference



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No.443/BCDFGISSSV/2022 made by the second respondent is set aside and the detenu Thiru.Jayaseelan, aged 63 years, son of Thiru.Savarimuthu, 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.)
26.06.2023

Index : Yes
Neutral Citation : Yes
mmi

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

To

- 1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai – 9.
- 2.The Commissioner of Police,
Greater Chennai, Vepery, Chennai – 7.
- 3.The Inspector of Police,
Team I, EDF-1, Central Crime Branch,
Vepery, Chennai – 7.
- 4.The Superintendent of Prison,
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- 5.The Public Prosecutor,
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and
R.SAKTHIVEL, J.,**

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