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H.C.P.No.402 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.07.2023

CORAM

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

H.C.P.NO.402 OF 2023

Balachandar

.. Petitioner

Vs

1.State of Tamil Nadu

Rep. By the Secretary

Home, Prohibition and Excise Department

Fort St. George, Chennai – 600 009.

2.The District Magistrate and District Collector

Tiruppur District,

Tiruppur.

3.The Superintendent of Police

Tiruppur District.

4.The Superintendent of Prison

Central Prison

Coimbatore.

5.The Inspector of Police

Mangalam Police Station

Tiruppur District.

.. Respondents

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PRAAYER: Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Habeas Corpus to call for the records relating to the detention order vide Memo Cr.M.P.No.02/Goonda/2023 dated 03.01.2023 passed by the second respondent and quash the same and direct the respondents herein to produce the petitioner namely Balachandar, S/o. Ulaganathan, aged 35 years, (who is presently undergoing detention in the Central Prison, Coimbatore) before this Court and set him at liberty.

For Petitioner : Mr.S.N.Arunkumar
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 the detenu assailing a 'preventive detention order dated 03.01.2023 bearing reference Cr.M.P.No.02/GOONDA/2023' [hereinafter 'impugned preventive detention order' for the sake of convenience and brevity]. To be noted, fifth respondent is the sponsoring authority and second respondent is the detaining authority as impugned preventive detention order has been made by second respondent.



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2. Impugned preventive 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.

3. There are nine adverse cases and one ground case. The ground case which constitutes substantial part of substratum of the impugned preventive detention order is Crime No.370 of 2022 on the file of Mangalam Police Station, Tiruppur District, for the alleged offence under Section 395 read with 397 of 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. Mr.S.N.Arunkumar, learned counsel on record for petitioner and Mr.E.Raj Thilak, learned State Additional Public Prosecutor for all respondents are before us.



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5.Mr.S.N.Arunkumar, learned counsel on record for petitioner submitted that nine adverse cases and one ground case has been mentioned in the impugned preventive detention order and as regards page No.323 in the grounds booklet, it is illegible which prevented the petitioner from making an effective representation.

6.The aforementioned point turns heavily on records and therefore learned 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 page No.323 in the grounds booklet is not readable (at least the lower portion of page No.323 is certainly not readable). A scanned reproduction of the same is as follows:



உணர்ச்சி மிகுந்த

காவல் ஆணையர்,
மேல்நாடு காவல் துறை (தஞ்சாவூர்)
தஞ்சாவூர் : மேல்நாடு காவல் துறை,
தஞ்சாவூர்.



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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 preventive detention order dated 03.01.2023 bearing reference Cr.M.P.No.02/GOONDA/2023 made by the second respondent is set aside and the detenu Thiru.Balachandar, aged 35 years, Son of Thiru.Ulaganathan, 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.)

17.07.2023

Index : Yes

Neutral Citation : Yes

TK

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

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- To
- 1.The Secretary
Government of Tamil Nadu
Home, Prohibition and Excise Department
Fort St. George, Chennai – 600 009.
 - 2.The District Magistrate and District Collector
Tiruppur District,
Tiruppur.
 - 3.The Superintendent of Police
Tiruppur District.
 - 4.The Superintendent of Prison
Central Prison
Coimbatore.
 - 5.The Inspector of Police
Mangalam Police Station
Tiruppur District.
 - 6.The Public Prosecutor
High Court, Madras.



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R.SAKTHIVEL, J.

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