



H.C.P.No.414 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.414 of 2023

Valarmathi
W/o.Suresh

.. Petitioner / Wife of Detenue

Vs.

1.State of Tamilnadu,
Rep. by the Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George,
Chennai – 600 009.

2.The Commissioner of Police,
The Greater Chennai City,
Vepery, Chennai – 600 007.

3.The Superintendent of Prison,
Central Prison, Puzhal
Chennai – 600 066.

4.The Inspector of Police,
Team-22, ALGSC-II,
Central Crime Branch,
Chennai.

... Respondents

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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 the detention order in Memo No.51/BCDFGISSSV/2023 dated 23.02.2023 passed by the 2nd respondent under the Tamilnadu Act 14 of 1982 and set aside the same and direct the respondents to produce the petitioner's husband, Suresh S/o.Rathinam aged about 38 years the detenu, now confined in Central Prison, Puzhal, Chennai before this Hon'ble Court and set the petitioner's husband Suresh S/o.Rathinam aged about 38 years the detenu herein at liberty.

For Petitioner : Mr.P.Narayana Prasadh
for Mr.J.Balamurugan

For Respondents : Mr.E.Raj Thilak
Additional Public Prosecutor

ORDER

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

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

2. When the captioned HCP was listed in the admission board on 21.03.2023, the following order was made by this Court.

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'Captioned Habeas Corpus Petition has been filed in this Court on 14.03.2023 inter alia assailing a detention order dated 23.02.2023 bearing Ref. No.51/BCDFGISSSV/2023 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.J.Balamurugan, 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 Sections 465, 467, 468, 471 read with 120(B) and 34 of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] in Crime No.253 of 2022 on the file of Chennai Central Crime Branch.*

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 grounds that the similar case bail order relied upon by the detaining authority to arrive at subjective satisfaction has not been furnished to the detenu and the remand order was not properly translated in the language which the detenu is conversant with, 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.'*



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3. The aforementioned order / proceedings shall now be read as an integral part and parcel of this order. This means that the short forms, short references and abbreviations used in the earlier order dated 21.03.2023 will continue to be used in the instant order also.

4. There is no adverse case. The ground case which is the sole substratum of the impugned preventive detention order is Crime No.253 of 2022 on the file of Central Crime Branch for the alleged offences under Sections 465, 467, 468, 471 r/w 120(B) and 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.

5. Mr.P.Narayana Prasadh, learned counsel representing the 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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6. As would be evident from the aforementioned admission board order, at the time of admission, learned counsel projected the point that similar case bail order relied upon by the detaining authority in the grounds of impugned preventive detention order has not been furnished to the detenu. Today, Mr.P.Narayana Prasadh, learned counsel advertng to this point drew our attention to a portion of paragraph 4 of the grounds of impugned preventive detention order which reads as follows:

'... In the case registered in Central Crime Branch Cr.No.163/2021 u/s 420, 465, 467, 468, 471 r/w 34 IPC, bail was granted by the Hon'ble High Court, Madras in Crl.O.P.No.201/2022. Hence, I infer that it is very likely of his coming out on bail in Central Crime Branch Cr.No.253/2022, since in similar case bail is granted by the courts after a lapse of time. If he comes out on bail, ...'

7. Learned counsel placed before us the grounds booklet supplied to the detenu and submitted that this order made by this Hon'ble Court in Crl.O.P.No.201 of 2022 has not been furnished to the detenu though the same has been relied upon by the detaining authority and more so it has



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been relied upon by the detaining authority for arriving at subjective satisfaction qua imminent possibility of detenu being enlarged on bail.

8. We had the benefit of perusing the grounds booklet. As this point turns heavily on records before us, learned Additional Public Prosecutor really does not have much of a say.

9. We find that the submission of learned counsel for petitioner deserves to be accepted as there is nothing to demonstrate that order of this Hon'ble Court in Crl.O.P.No.201 of 2022 has been furnished to the detenu.

10. The narrative thus far brings to light that there is an infraction of detenu's sacrosanct right to make an effective representation against the impugned preventive detention order. To be noted we have repeatedly held that such a right is a constitutional safeguard ingrained in Article 22(5) of the Constitution of India and therefore, infraction of the same vitiates the preventive detention order. In the case on hand, impugned preventive detention order stands vitiated and further consequence is it deserves to be



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dislodged.

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11. Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 23.02.2023 bearing reference 51/BCDFGISSSV/2023 made by the second respondent is set aside and the detenu Thiru.Suresh, aged 38 years, son of Thiru.Rathinam 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 : Yes/No
Speaking order/Non-speaking order
Neutral Citation : Yes /No
rsi

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



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

rsi

To

- 1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George,
Chennai – 600 009.
- 2.The Commissioner of Police,
The Greater Chennai City,
Vepery, Chennai – 600 007.
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Central Crime Branch,
Chennai.
- 5.The Public Prosecutor
Madras High Court, Chennai

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