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H.C.P.No.458 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.07.2023

Coram

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

H.C.P.No.458 of 2023

Anu

.. Petitioner

VS

- 1.The State of Tamil Nadu
Rep. By its Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai – 600 009.
- 2.The District Collector and District Magistrate,
Coimbatore.
- 3.The Superintendent of Police,
Coimbatore.
- 4.The Superintendent of Prison,
Central Prison, Coimbatore - 18.
- 5.The Inspector of Police,
Thudiyalur Police Station,
Coimbatore.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus to call for the entire records from the 2nd respondent in connection with order Cr.M.P.No.37/D.O./2022/E1 dated 14.12.2022 and quash the same and produce the petitioner's brother namely Gokul, S/o.Subramanian, aged 28 years, now confined in Central Prison,



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Coimbatore under the Tamil Nadu Act 14 of 1982 before this Court and set him at liberty.

For Petitioner : Ms.S.Nadhiya
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 in the Admission Board on 28.03.2023, this Court made the following order:

'Captioned Habeas Corpus Petition has been filed in this Court on 20.03.2023 inter alia assailing a detention order dated 14.12.2022 bearing reference Cr.M.P.No.37/D.O/2022/E1 made by 'second respondent' [hereinafter 'Detaining Authority' for the sake of convenience and clarity]. To be noted, fifth respondent is the Sponsoring Authority.

2. Sister of the detenu is the petitioner.

3. Learned counsel for petitioner submits that ground case qua the detenu is for alleged offences under Sections 8(c) read with 22(b), 25, 27(a) of 'the Narcotic Drugs and Psychotropic Substances Act, 1985' [hereinafter 'NDPS Act' for the sake of convenience and clarity] in Crime No.830 of 2022 on the file of Thudiyalur Police Station.

4. The aforementioned detention order has been made on the premise that the detenu is a 'Drug Offender' under Section 2(e) of 'The Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Cyber law offenders, Drug-offenders, Forest-offenders, Goondas, Immoral



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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 furnished to the detenu 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.'

2. The aforementioned order made in the 28.03.2023 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 is no adverse case. The ground case which is the sole substratum of the impugned detention order is **Crime No.830 of 2022** on the file of Thudiyalur Police Station for the alleged offences under Sections 8(c) read with 22(b), 25, 27(a) of NDPS Act. 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.



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4. Ms.S.Nadhiya, 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 Admission Board, campaign against impugned preventive detention order was predicated on the point that certain pages in the booklet furnished to the detenu are not legible. To be noted, this is captured in paragraph 5 of the Admission Board order dated 28.03.2023. Be that as it may, in the Final Hearing Board today, Ms.S.Nadhiya, learned counsel on record for petitioner posited her argument on one point and that one point is the கைது குறிப்பாணை (page No.12) of the grounds booklet does not contain signature of the witness. Elaborating on this point, learned counsel drew our attention to page No.12 of grounds booklet and submitted that arrest intimation was not communicated to the detenu's mother as mentioned in the கைது குறிப்பாணை and this is buttressed by the witness signature column being left blank in கைது குறிப்பாணை. On perusing the grounds booklet, we find that the submission of learned counsel is correct.

6. Learned Prosecutor submitted to the contrary and learned Prosecutor submitted that the arrest intimation has been given by



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way of a 'Short Messaging Service' [SMS]. We are not entering into this factual dispute arena or the question as to whether the arrest intimation can be given by way of SMS. We are proceeding on the simple point that 'சாட்சியின் கையெழுத்து' column in கைது குறிப்பாணை is blank which means the benefit of doubt has to be given to the detenu. If the benefit of doubt is given to the detenu as we are concerned with Arrest Intimation Form in the ground case which constitutes substantial portion of substratum of the impugned prevention detention order, we have no hesitation in saying that the rights of the detenu to make an effective representation which is a constitutional guarantee ingrained in Clause 5 of Article 22 of the Constitution of India has been impaired. In this regard, we also remind ourselves of Section 41-B(b)(i) of 'The Code of Criminal Procedure, 1973 (2 of 1974)' [hereinafter 'Cr.PC' for the sake of brevity and clarity] which makes it mandatory that memorandum of arrest should be attested by atleast one witness. To be noted, Section 41-B(b)(i) of Cr.PC reads as follows:

'41-B. Procedure of arrest and duties of officer making arrest.- Every police officer while making an arrest shall -

(a)

(b) prepare a memorandum of arrest which shall be -

(i) attested by at least one witness, who is a



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member of the family of the person arrested or a respectable member of the locality where the arrest is made;'

Sequitur is, impugned preventive detention order deserves to be dislodged.

7. Before concluding, we also remind ourselves that preventive detention is not a punishment and HCP is a high prerogative writ.

8. Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 14.12.2022 bearing reference Cr.M.P.No.37/D.O./2022/E1 made by the second respondent is set aside and the detenu Thiru.Gokul, aged 28 years, son of Thiru.Subramanian, 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.)
04.07.2023

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, Coimbatore.



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To

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Home, Prohibition and Excise Department,
Secretariat, Chennai – 600 009.
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Coimbatore.
- 3.The Superintendent of Police,
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- 6.The Public Prosecutor,
High Court, Madras.



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

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