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H.C.P.No.470 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.08.2023

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THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

H.C.P.No.470 of 2023

Porkilai @ Thenmozhi
W/o.Siva @ Kutti Siva

.. Petitioner

Vs.

1. The Chief Secretary to Government of Puducherry
Union of Puducherry
Chief Secretariat, Puducherry.
2. The Secretary to Lieutenant Governor
Rajnivas, Puducherry.
3. The District Magistrate-cum-Authorised Officer
Office of the District Magistrate
1st Floor, Vazhadavoor Road
Kavndanpalayam, Puducherry - 605 009.
4. The Superintendent of Police (East)
Puducherry.
5. The Chief Superintendent of Jail
Central Prison, Kalapet
Puducherry.

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6. The State House Officer
Orleanpet Police Station
Puducherry.

..Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ order or direction in the nature of WRIT OF HABEAS CORPUS, to call for the records relating to the detention order in No. 02/DM/RO/D2/PPASAA/2023 dated 14.02.2023 passed by the 3rd respondent under the Puducherry Prevention of Anti-Social Activities Act, 2008 (Act 10 of 2010) and set aside the same and direct the respondents to produce the petitioner's husband Siva @ Kutti Siva, S/o. Joseph, aged about 33 years, the detenue now confined in Central Prison, Kalapet, Puducherry before this Hon'ble Court and set the petitioner's husband Siva @ Kutti Siva S/o. Joseph aged about 33 years, the detenu herein at liberty.

For Petitioner	:	Mr.S.Senthilvel along with Ms.Kokila representing Mr.K.Sasindran
For Respondents	:	Mr.K.S.Mohandoss Public Prosecutor (Puducherry) assisted by Ms.N.Danalatchoumy

ORDER

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

This order will now dispose of the captioned 'Habeas Corpus Petition'
[hereinafter 'HCP' for the sake of brevity, convenience and clarity].

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2. When the captioned HCP was listed before this Court 'For Admission' on 28.03.2023, the following proceedings / order was made:

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M.SUNDAR, J.,

and

M.NIRMAL KUMAR, J.,

(Order of the Court was made by M.SUNDAR, J.,)

Captioned Habeas Corpus Petition has been filed in this Court on 21.03.2023 inter alia assailing a detention order dated 14.02.2023 bearing reference No.02/DM/RO/D2/PPASAA/2023 made by 'third respondent' [hereinafter 'Detaining Authority' for the sake of convenience and clarity]. To be noted, sixth respondent is the Sponsoring Authority.

2. Wife of the detenu is the petitioner.

3. Learned counsel for petitioner submits that ground case qua the detenu is for alleged offences under Sections 399 and 402 of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] in Crime No.307 of 2022 on the file of Orleanpet Police Station.

4. The aforementioned detention order has been made on the premise that the detenu is a 'Dangerous Person' under sub-section (1) of Section 3 of 'the Puducherry Prevention of Anti-Social Activities Act, 2008 (Act No.10 of 2010)'



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[hereinafter 'PPASA Act' for the sake of convenience and clarity].

5. The detention order has been assailed inter alia on the ground that the representation sent by the petitioner was not properly considered by the Detaining Authority.

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.'

3. The aforementioned Admission Board order captures essentials that are imperative for appreciating this order and therefore, we are not setting out the same again. However, short forms, short references and abbreviations used in the Admission Board order will continue to be used in the instant order also for the sake of brevity, convenience and clarity. To be noted, 'preventive detention order dated 14.02.2023 bearing reference No.02/DM/RO/D2/PPASAA/2023' made by the Detaining Authority shall hereinafter be referred to as 'impugned preventive detention order' in this order for the sake of brevity, convenience and clarity.



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4. Mr.S.Senthilvel, learned counsel representing the counsel on record for petitioner, assisted by Ms.Kokila, learned counsel and Mr.K.S.Mohandoss, learned Public Prosecutor (Puducherry), assisted by Ms.N.Danalatchoumy, learned counsel for respondents are before us.

5. A perusal of paragraph No.5 of aforementioned Admission Board order dated 28.03.2023 brings to light that at the time of admission, learned counsel for petitioner posited his challenge to the impugned preventive detention order on the ground that the representation sent by petitioner i.e., representation against the impugned preventive detention order has not been properly considered but today in the final hearing Board, Mr.S.Senthilvel, learned counsel assisted by Ms.Kokila, representing learned counsel on record for petitioner changed his line of attack and submitted that a document i.e., remand order qua detenu in one of the adverse cases which has been specifically adverted to / relied on qua the grounds of impugned preventive detention order has not been furnished to the detenu. Elaborating his submission in this direction, learned counsel for petitioner drew our attention to sub-paragraph No.(i) of Paragraph No.(2) of grounds



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of impugned preventive detention order which reads as follows:

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'2. The grounds on which the said detention order has been made against the said Siva @ Kutti Siva (33), S/o. Joseph, 3rd Cross Street, Annai Indira Ninaivu Nagar, Orleanpet, Puducherry including the details of his previous involvement in criminal cases are as follows:

(a) to (h)

(i) The petitioner further submits that the counter petitioner involved in Arms Act in Cr.No.153/2022 u/s.448, 506(ii) IPC and 25(1-A) of Arms Act, dated 18.11.2022 of Reddiarpalayam Police Station, Puducherry in the case he got anticipatory bail. Presently the counter petitioner was arrested and remanded into judicial custody concern in Criminal No.307/2022, u/s.399, 402 IPC of Orleanpet P.S., Puducherry on 27.12.2022.'

Learned counsel submitted that reference to 'counter petitioner' in the aforementioned paragraph is reference to detenu. Learned counsel submitted that grounds of impugned preventive detention order made by Detaining Authority categorically relies on factum of detenu being remanded to judicial custody on 27.12.2022 in Crime No.307 of 2022 on the file of Orleanpet Police Station, Union Territory of Puduherry but the remand order has not been furnished to the detenu.



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WEB COPY Learned counsel submits that this has impaired the detenu's right to make an effective representation against the impugned preventive detention order.

6. In response to the aforementioned argument, Mr.K.S.Mohandoss, learned Public Prosecutor for Union Territory of Puducherry, assisted by Ms.N.Danalatchoumy, learned counsel, drew our attention to page Nos.140 to 144 of the grounds booklet and submitted that Arrest / Court Surrender Form has been furnished to the detenu.

7. We carefully considered the submissions made on both sides. We find from the Arrest / Court Surrender Form and remand requisition report of police at Page Nos.140 to 144 of the grounds booklet that the date of arrest has been shown as 26.12.2022 whereas paragraph No.2(i) of grounds of impugned preventive detention order, to which our attention was drawn shows the date of arrest as 27.02.2022. This by itself will baffle the detenu. This by itself is a ground that is good enough to dislodge the impugned



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preventive detention order. However, we also notice that as rightly contended by learned counsel for petitioner, remand order though specifically relied on in paragraph 2(i) of grounds of impugned preventive detention order in Crime No.307 of 2022 on the file of Orleanpet Police Station, Union Territory of Puducherry the same has not been furnished to the detenu. No elucidation is required to say that if such remand order which has been specifically adverted to and relied on by the Detaining Authority in the grounds of impugned preventive detention order is not furnished to the detenu, it will impair the rights of detenu to make an effective representation. To be noted, such rights of a detenu to make an effective representation against a impugned preventive detention order is a sanctus/sacrosanct constitutional safeguard ingrained in Article 22(5) of the Constitution of India. This Court has repeatedly held that infraction of such rights of a detenu vitiates the impugned preventive detention order and leaves it vulnerable for being dislodged in habeas legal drill. We have no hesitation in saying that this is one such case.



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

9. Apropos, the further sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 14.02.2023 bearing reference No.02/DM/RO/D2/PPASAA/2023 made by the third respondent is set aside and the detenu Thiru. Siva @ Kutti Siva, male, aged 33 years, son of Thiru.Joseph, 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.)

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Index : Yes

Speaking order

Neutral Citation : Yes

mk

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



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and
R.SAKTHIVEL, J.,

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To

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Union of Puducherry
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Rajnivas, Puducherry.
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