



H.C.P.No.495 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.09.2023

CORAM

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

H.C.P.No.495 of 2023

Shanthi
W/o.Kalimuthu

.. Petitioner

Vs

1. The Additional Chief Secretary to Government
Home, Prohibition and Excise Department
Fort St.George
Chennai-600 009.
2. Commissioner of Police / Detaining Authority
Coimbatore City.
3. The Superintendent
Central Prison, Coimbatore.
4. The Inspector of Police
Cyber Crime Police Station
Coimbatore City.

.. Respondents

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

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detention order passed by the second respondent pertaining to the order made in C.No.18/G/IS/2023 dated 06.03.2023 in detain the detenu under 2(bb) of Tamil Nadu Act 14 of 1982 as a Cyber Law Offender and quash the same and direct the respondent to produce the detenu K.Vignesh, son of Kalimuthu aged about 32 years who is detained at Central Prison, Coimbatore before this Honble Court and set him at liberty.

For Petitioner : Mr.S.Senthilvel
representing Mr.G.Nirmal Krishnan
For Respondents : Mr.E.Raj Thilak
Additional Public Prosecutor
Assisted by Mr.Aravind .C

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].

2. When the captioned HCP was listed before this Court in Admission Board on 31.03.2023, the following proceedings / order was made:

'H.C.P.No.495 of 2023

M.SUNDAR, J.,
and
M.NIRMAL KUMAR, J.,



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

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Captioned Habeas Corpus Petition has been filed in this Court on 24.03.2023 inter alia assailing a detention order dated 06.03.2023 bearing Reference C.No.18/G/IS/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. *Mother of the detenu is the petitioner.*

3. *Mr.G.Nirmalkrishnan, 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 Section 420 of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] and Sections 66C and 66D of Information Technology (Amended) Act, 2008 in Crime No.7 of 2023 on the file of Coimbatore Cyber Crime Police Station.*

4. *The aforementioned detention order has been made on the premise that the detenu is a 'Cyber Law Offender' under Section 2(bb) 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*



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the grounds that the remand order pertaining to ground case has not been translated in Tamil and some of the pages in the booklet are illegible.

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 all essentials that are imperative for appreciating this order and therefore we are not setting out the same again in this final order. Suffice to say that aforementioned Admission Board order shall now be read as an integral part and parcel of this final order. Be that as it may, we shall continue to use the short forms, short references and abbreviations used in the Admission Board order in this order also for the sake of convenience and clarity. To be noted, 'detention order dated 06.03.2023 bearing reference C.No.18/G/IS/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 and Mr.E.Raj Thilak, learned State Additional Public Prosecutor for all respondents are before us.

5. As would be evident from the aforementioned Admission Board order dated 31.03.2023, at the time of admission, learned counsel for HCP petitioner projected the point that some of the pages in the grounds booklet furnished to the detenu are illegible. Elaborating on this submission, learned counsel for petitioner drew our attention to page No.40 அ which is a copy of Flowchart showing details of crimes alleged to have been committed by the detenu. In this regard, learned counsel submits that this Flowchart which is at page No.40 அ is not readable.

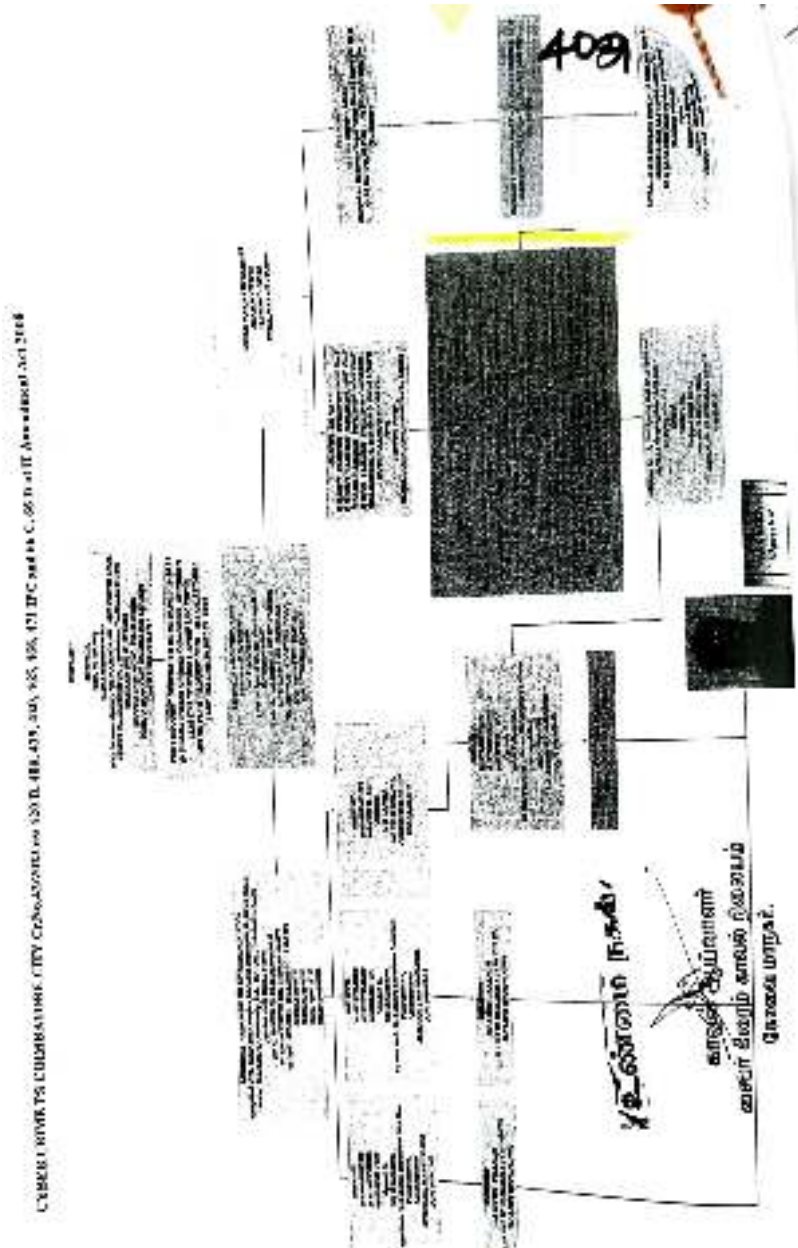
6. This Court had the benefit of perusing the grounds booklet and this Court is of the view that the aforementioned Flowchart which is at page No. 40 அ is not readable. A scanned reproduction of the same is as follows:



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7. The aforementioned point turns heavily on records and therefore learned Prosecutor really does not have much of a say.

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8. This means that the further submission of learned counsel for HCP petitioner that the right of the detenu to make an effective representation as against the impugned preventive detention order has been impaired owing to aforementioned Flowchart copy furnished to detenu being so smudged that it is not readable deserves to be sustained as such right is a sanctus constitutional safeguard ingrained in Article 22(5) of the Constitution of India. This constitutional right of the detenu has been subjected to infraction owing to the smudged / not readable copy of Flowchart. Therefore, the impugned preventive detention order is liable to be dislodged.

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

10. Ergo, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 06.03.2023 bearing reference C.No.18/G/IS/2023 made by the second respondent is set aside and the detenu Thiru.K.Vignesh, male, aged 32 years, son of Thiru.Kalimuthu is



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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.)

26.09.2023

Index : Yes/No

Neutral Citation : Yes/No

Speaking / Non-speaking order

mk

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

To

1. The Additional Chief Secretary to Government
Home, Prohibition and Excise Department
Fort St.George
Chennai-600 009.
2. Commissioner of Police / Detaining Authority
Coimbatore City.
3. The Superintendent
Central Prison, Coimbatore.
4. The Inspector of Police
Cyber Crime Police Station
Coimbatore City.
5. The Public Prosecutor
High Court, Madras.

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

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