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H.C.P.No.510 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.07.2023

CORAM

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

H.C.P.No.510 of 2023

Murali

.. Petitioner

Vs

1.The Secretary to the Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai -9.

2.District Magistrate and District Collector
of Tiruvallur, Tiruvallur District.

3.The Superintendent of Police,
Tiruvallur, Tiruvallur District.

4.The Superintendent,
Central Prison - II, Puzhal, Chennai.

5.State rep. By
The Inspector of Police,
Tiruttani Police Station,
Tiruvallur District.

.. Respondents

Petition filed under Article 226 of the Constitution of India
praying for issuance of a writ of habeas corpus to call for the records in
connection with the order of detention passed by the second

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respondent dated 21.02.2023 in BCDFGISSSV No.09/2023 against the petitioner's son Rajesh, male, aged 25 years, son of Murali, who is confined at Central Prison – II, Puzhal, Chennai and set aside the same and consequently direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner : Mr.A.Saranraj
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 03.04.2023, this Court made the following order:

'Captioned Habeas Corpus Petition has been filed in this Court on 24.03.2023 inter alia assailing a detention order dated 21.02.2023 bearing reference B.C.D.F.G.I.S.S.S.V No.09/2023 made by 'second respondent' [hereinafter 'Detaining Authority' for the sake of convenience and clarity]. To be noted, fifth respondent is the Sponsoring Authority.

2. To be noted, father of the detenu is the petitioner.



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3. *Mr.V.S.Madhanraj, learned counsel on record for habeas corpus petitioner is before us. Learned counsel for petitioner submits that ground case qua the detenu is for an alleged offence under Section 392 of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] in Crime No.127 of 2023 on the file of Tiruttani Police Station.*

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 ground that in spite of the fact that the detenu has not moved any bail application, the detaining authority has come to the conclusion that there is an imminent possibility of the detenu coming out on bail, which reflects non-application of mind.*

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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2. The aforementioned order made in the 03.04.2023 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 are three adverse cases. The ground case which constitutes substantial part of substratum of the impugned preventive detention order is Crime No.127 of 2023 on the file of Tiruttani Police Station for the alleged offence under Section 392 IPC. Owing to the nature of the challenge to the impugned preventive detention order, it is not necessary to delve into the factual matrix or be detained further by facts.

4. Mr.A.Saranraj, 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. As would be evident from the Admission Board order dated 03.04.2023, at the time of admission, learned counsel for HCP petitioner projected the point that there is non-application of mind on the part of the detaining authority in coming to the conclusion that there is imminent possibility of the detenu coming out on bail inspite of the fact that the detenu has not moved any bail application, however, in the final hearing today, learned counsel for petitioner pivoted his campaign against the impugned preventive detention order on the ground that the mahazar enclosed in the grounds booklet is illegible. Elaborating on the above submission, learned counsel on record for petitioner drew our attention to Page Nos.60 and 61 of the grounds booklet and submitted that the Mahazar pertaining to third adverse case is not readable.

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

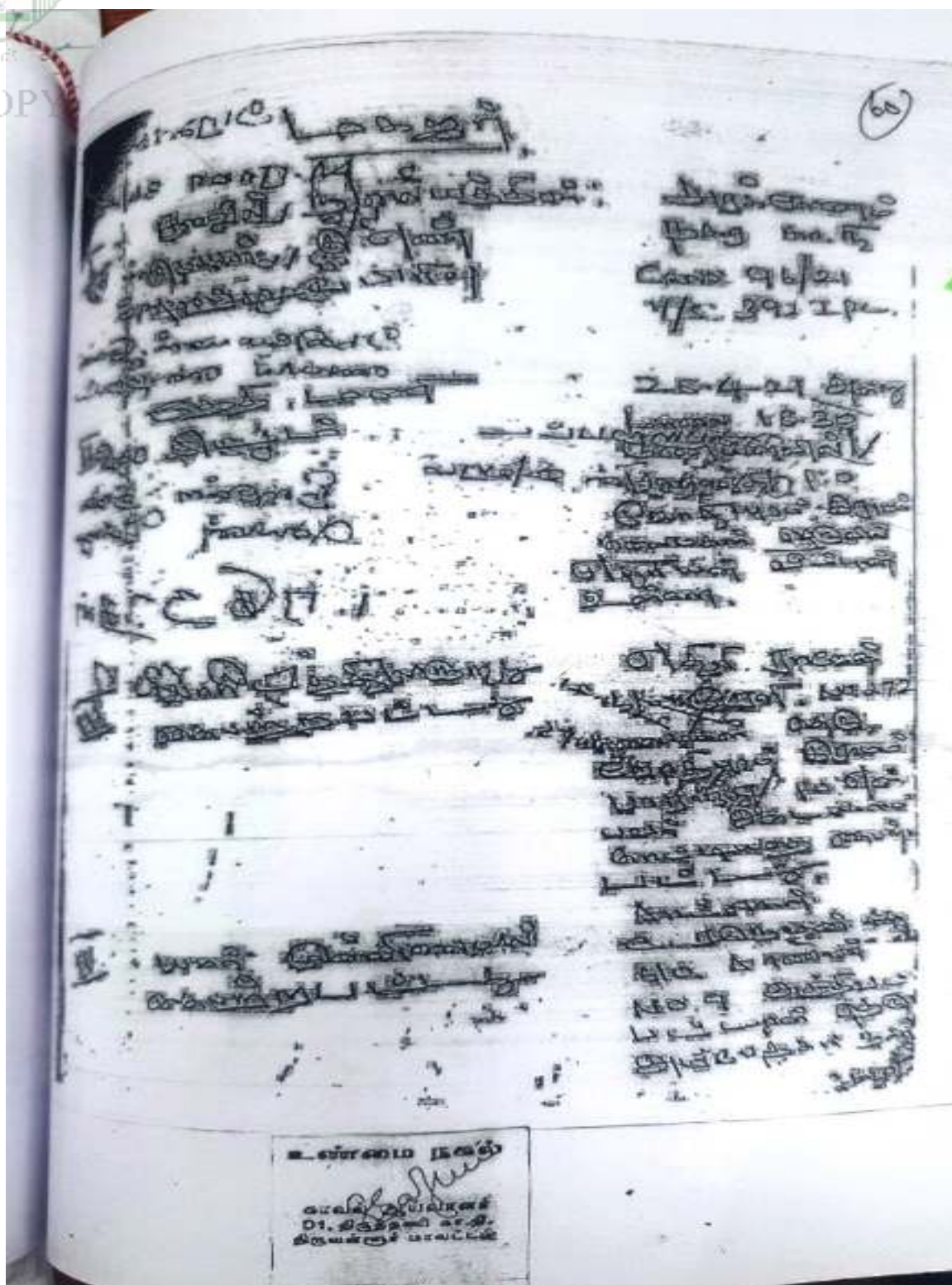
7. This Court had the benefit of perusing the grounds booklet and this Court is of the view that the aforementioned mahazar pertaining to third adverse case which is at page Nos.60 and 61 is not readable. A scanned reproduction of the same is as follows:

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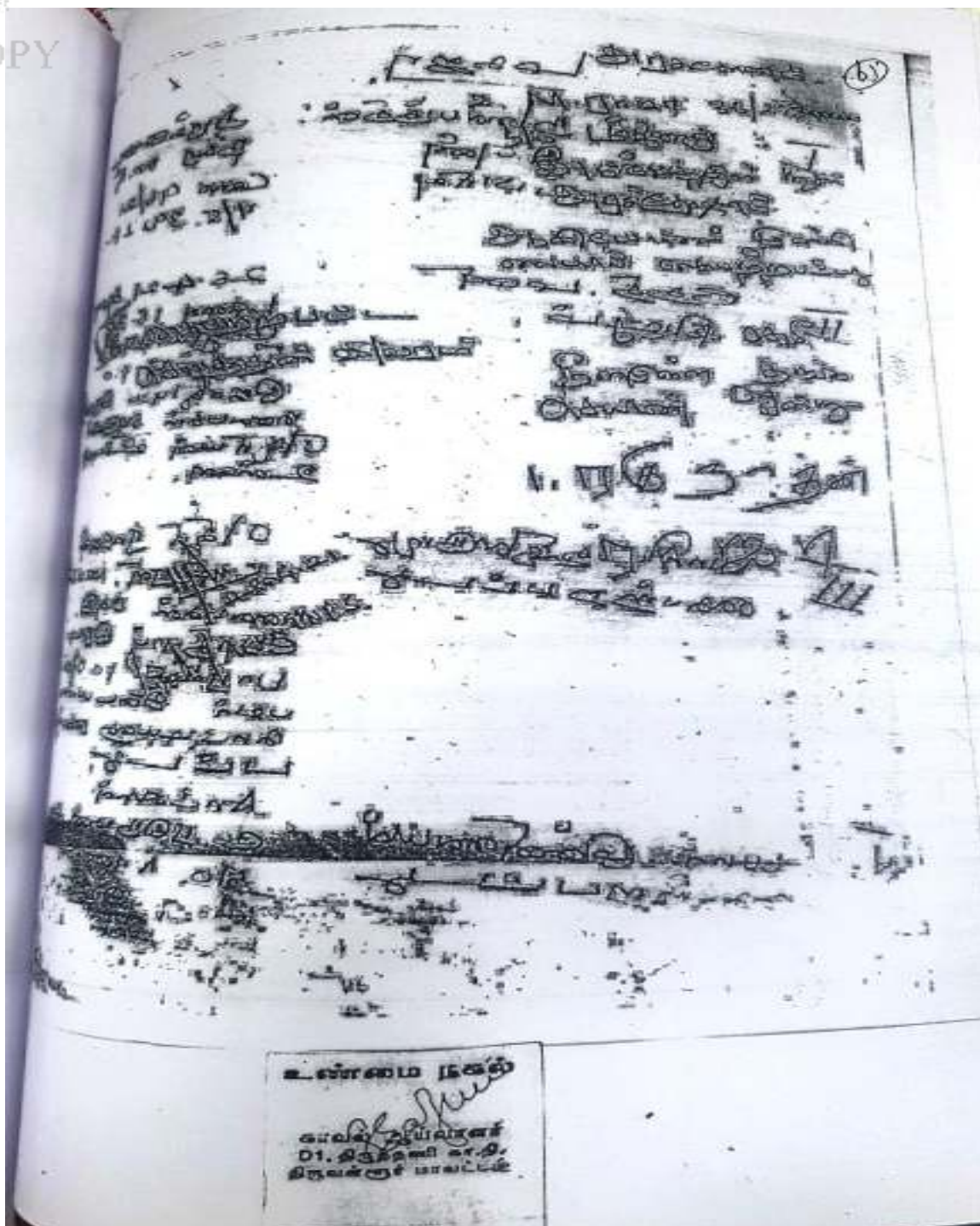
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8. This means that right of the detenu to make an effective representation as against the impugned preventive detention order has been impaired. Such a right is sanctus constitutional right ingrained in Article 22(5) of the Constitution of India. This 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.

9. Ergo, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 21.02.2023 bearing reference BCDFGISSSV No.09/2023 made by the second respondent is set aside and the detenu Thiru.Rajesh, aged 25 years, Son of Thiru.Murali, 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.)
31.07.2023

Index : Yes
Neutral Citation : Yes
mmi

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

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To

- 1.The Secretary to the Government,
Home, Prohibition and Excise Department,
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- 2.The District Magistrate and District Collector
of Tiruvallur, Tiruvallur District.
- 3.The Superintendent of Police,
Tiruvallur, Tiruvallur District.
- 4.The Superintendent,
Central Prison - II, Puzhal, Chennai.
- 5.The Inspector of Police,
Tiruttani Police Station,
Tiruvallur District.
- 6.The Public Prosecutor
High Court, Madras.



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

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