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H.C.P.No.531 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.531 of 2023

Sugashini

.. Petitioner

VS

- 1.The State of Tamil Nadu rep. By
Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George, Chennai – 600 009.
- 2.The Commissioner of Police,
Avadi City,
Office of the Commissioner of Police
(Goondas Section), Avadi, Chennai – 54.
- 3.The Superintendent of Prison,
Central Prison, Puzhal, Chennai.
- 4.The Inspector of Police,
E-5 Sholavaram Police Station,
Chennai – 67.

.. 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 relating to the detention order dated 15.02.2023 passed by the second respondent in BCDFGISSSV No.39 of 2023 and quash the same and direct the respondents herein to produce the petitioner's husband Santhosh @ Santhan, S/o.Sekar, aged 24



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years, who is presently undergoing detention in the Central Prison, Puzhal, Chennai, before this Court and set him at liberty forthwith.

For Petitioner : Mr.M.Vetrivel
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 10.04.2023, this Court made the following order:

'Captioned Habeas Corpus Petition has been filed in this Court on 30.03.2023 inter alia assailing a detention order dated 15.02.2023 bearing reference No.39/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. Learned counsel for petitioner submits that ground case qua the detenu is for alleged offences under Sections 341, 294(b), 336, 427, 307, 394, 397 and 506(ii) of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] in Crime No.51 of 2023 on the file of E-5 Sholavaram 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



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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 arrest card in the grounds booklet furnished to the detenu has not been translated in Tamil 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 10.04.2023 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 is one adverse case. The ground case which constitutes substantial part of substratum of the impugned preventive detention order is Crime No.51 of 2023 on the file of E-5 Sholavaram Police Station for the alleged offences under Sections 341, 294(b), 336, 427, 307, 394, 397 and 506(ii) of 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.



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4. Mr.M.Vetrivel, learned 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 paragraph 5 of the Admission Board order dated 10.04.2023, at the time of admission, learned counsel for petitioner posited his argument on the point that arrest card in the grounds booklet furnished to the detenu has not been translated in Tamil which prevented the detenu from making an effective representation, however, in the Final Hearing Board today, learned counsel predicated his argument on the ground that the document specifically adverted to in the index and assigned page No.93 (to be noted Sl. No.56) which reads as 'எதிரி விஜய் (எ) விஜி (எ) அப்பு என்பவரது உறவினர் வாக்குமூலம்' has not been furnished to the detenu in the grounds booklet.

6. The grounds booklet served on the detenu was placed before us and we had the benefit of perusing the same. We find that there is no reason to disagree with the submission of learned counsel for petitioner as page No.93 is missing.



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7. In response to the aforementioned argument, learned Prosecutor submitted that the statement of Vijay @ Viji @ Appu, who is related to the detenu is a co-accused and is not of much significance. Learned Prosecutor also submitted that one page having been missed in the grounds booklet is a secretarial error.

8. We carefully considered the submissions made on both sides. We find that in the grounds of impugned preventive detention order, the detaining authority had adverted to the statement of Vijay @ Viji @ Appu extensively in one paragraph and the same reads as follows:

'After due investigation, the Inspector of Police has arrested the accused Thiru.Vijay @ Viji @ Appu, Thiru.Santhosh @ Sathan Santhosh and Thiru.Aravinth @ Bell inside a dilapidated building at Sholavaram lake on 24.01.2023 at 0800 hours in the morning and enquired. On enquiry, the accused Thiru.Vijay @ Viji @ Appu, Thiru.Santhosh @ Sathan Santhosh and Thiru.Aravinth @ Bell admitted they have involved in the above offence apart from involving in E-5 Sholavaram P.S. Cr.No.50/2023. The voluntary confession statements of the accused Thiru.Vijay @ Viji @ Appu, Thiru.Santhosh @ Sathan Santhosh and Thiru.Aravinth @ Bell were recorded in the presence of the witnesses separately. In their confession statements, the accused Thiru.Vijay @ Viji @ Appu,



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Thiru.Santhosh @ Sathan Santhosh and Thiru.Aravinth @ Bell have admitted that on 24.01.2023 at about 1530 hours near Ramdev Pawn Broker shop near Attanthangal Gas Godown they have assaulted Thiru.Vignesh with knives and attempted to commit murder of him since he refused to reveal the whereabouts of Thiru.Seenu and Thiru.Iyyappan. Further, the accused Thiru.Vijay @ Viji @ Appu, Thiru.Santhosh @ Sathan Santhosh and Thiru.Aravinth @ Bell have admitted that on 24.01.2023 evening at the corner of M.G.R. Street opposite to Banyan tree, Attanthangal, they have assaulted a person with their knives since he questioned them for riding their motor cycles rashly and they have snatched away the cash from his pocket, threatened the public by hurling bottles and they have escaped from the spot.'

9. Owing to the aforementioned extensive articulation as regards the statement of Vijay @ Viji @ Appu in the grounds of impugned preventive detention order by the detaining authority, we have no hesitation in coming to the conclusion that not furnishing the same to the detenu has clearly impaired the detenu's right to make an effective representation against the impugned preventive detention order. Therefore, we are unable to sustain the argument of learned Prosecutor that it is only a secretarial error and a statement of a co-accused. In this regard, it is also pertinent to mention that procedural fairness in making the preventive detention



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order is an essential facet of Article 21 of The Constitution of India.

Procedural fairness is sacrosanct with regard to making the impugned preventive detention order. We find that this facet which has been reiterated by Hon'ble Supreme Court repeatedly has been violated or in other words there is infraction of this principle. Infraction of this principle means that it vitiates the impugned preventive detention order and leaves it vulnerable for being dislodged.

10. Ergo, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 15.02.2023 bearing reference No.39/BCDFGISSSV/2023 made by the second respondent is set aside and the detenu Thiru.Santhosh @ Sathan Santhosh, aged 24 years, son of Thiru.Sekar, 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
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P.S: Registry to forthwith communicate this order to Jail authorities in Central Prison, Puzhal, Chennai.



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To

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Home, Prohibition and Excise Department,
Fort St.George, Chennai – 600 009.
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Avadi City,
Office of the Commissioner of Police
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- 5.The Public Prosecutor,
High Court, Madras.



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

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