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H.C.P.No.534 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.534 OF 2023

Vanitha

.. Petitioner

Vs.

1.The State of Tamil Nadu
Represented by Secretary to Government
Prohibition & 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 – 600 054.

3.The Superintendent of Prison
Central Prison
Puzhal.

4.The Inspector of Police
E-5, Sholavaram Police Station,
Chennai – 600 067.

.. Respondents

1/12



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PRAYER: 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 B.C.D.F.G.I.S.S.S.V.No.40 of 2023 and quash the same and direct the respondents herein to produce the petitioner's son Vijay @ Viji @ Appu S/o. Perumal aged 25 years, who is presently undergoing detention in the Central Prison, Puzhal, before this Court and set him at liberty forthwith.

For Petitioner : Mr.K.Mohan
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.40/BCDFGISSSV/2023 made by 'second respondent'



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[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. 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 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 copy of the grounds of detention in



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English was not properly 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 is the sole substratum of the impugned preventive detention order is Crime No.51 of 2023 on the file of E-5 Sholavaram Police Station for alleged offences under Sections 341, 294(b), 336, 427, 307, 394 and 506(ii) of IPC. Owing to the



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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.K.Mohan, learned counsel on record for petitioner and Mr.E.Raj Thilak, learned State Additional Public Prosecutor for all respondents are before us.

5.A perusal of paragraph 5 of the aforementioned Admission Board order dated 10.04.2023 will bring to light that at the time of admission, the point that grounds of detention in English has not been properly translated in Tamil was projected however in the final hearing today, Mr.K.Mohan, learned counsel on record for petitioner predicated his campaign against the impugned preventive detention order (to be noted, 'order dated 15.02.2023 bearing Reference No.40/BCDFGISSSV/2023 made by Detaining Authority' is being referred to as 'impugned preventive detention order' for the sake of convenience) on the ground that a document referred to with specificity in the index to grounds booklet has not been furnished to the detenu.

6.Elaborating on the above submission, learned counsel drew our



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attention to the index in the grounds booklet and Serial No.58 thereat reads as

follows:

58.	எதிரி சந்தோஷ் (எ) சாத்தான் சந்தோஷ் என்பவரது உறவினர் வாக்குமூலம்	95
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7.Learned counsel submitted that Santhosh @ Sathan Santhosh's relative's statement has not been furnished to the detenu though it has been assigned a specific page number namely page No.95. The grounds booklet as served on the detenu was placed before us. We had the benefit of perusing the same and we find that it contains only 94 pages.

8.In response to the aforementioned argument, learned Prosecutor submitted that the aforementioned statement mentioned at Serial No.58 is a statement of relative of co-accused in the ground case and in that view of the matter it may really not make an impact.

9.We carefully considered the rival submissions. We are of the



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view that the point urged by the learned counsel for petitioner cuts ice with us as the Detaining Authority has referred to this statement of relative of Santhosh @ Sathan Santhosh extensively in the grounds of the impugned preventive detention order and the relevant portion in paragraph 3 of the grounds of impugned preventive detention order 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 08.00 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, Thiru. Santhosh @ Sathan Santhosh and Thiru. Aravinth @ Bell



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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.'

10. Therefore, it is clear from the narrative thus far that Serial No.58 which is described as statement of one Santhosh @ Sathan Santhosh forms an important part of the substratum of the impugned preventive detention order. In this view of the matter, the same not being furnished to the detenu certainly impairs the rights of the detenu to make an effective



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representation against the impugned preventive detention order. To be noted,

the right of a detenu to make an effective representation is a constitutional safeguard ingrained in Article 22(5) of the Constitution. In addition to this, we also remind ourselves that procedural fairness is a very sacrosanct aspect of a preventive detention order as has been repeatedly held by the Hon'ble Supreme Court in ***SAMBHUNATH SARKAR VS. STATE OF WEST BENGAL [1973 (1) SCC 856]*** and a catena of case laws. This impells us to say that this is also an infraction of procedural fairness i.e., non furnishing of statement that has been adverted to and articulated by the Detaining Authority in the grounds of impugned preventive detention order not being furnished to the detenu. This is clearly an infraction of procedural fairness which has been held to be an integral and sacrosanct part of procedural fairness qua preventive detention order making.

11.In the light of the narrative, discussion and dispositive reasoning supra, we have no hesitation to say that the impugned preventive detention order is vitiated and that the same deserves to be dislodged.

12.Ergo, the sequitur is, captioned HCP is allowed. Impugned



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preventive detention order dated 15.02.2023 bearing reference

No.40/BCDFGISSSV/2023 made by the second respondent is set aside and

the detenu Thiru. Vijay @ Viji @ Appu, aged 25 years, Son of Thiru. Perumal

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

Speaking

TK

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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1. The Secretary to Government
Government of Tamil Nadu
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Avadi City,
Office of the Commissioner of Police
(Goondas Section)
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