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H.C.P.No.556 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.09.2023

CORAM

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

H.C.P.No.556 of 2023

John Peter

.. Petitioner

Vs

- 1.The State of Tamil Nadu
Rep. By its Secretary to the Government,
Home, Prohibition and Excise Department,
Fort St. George, Chennai – 9.
- 2.The Commissioner of Police,
Office of Commissioner of Police,
Coimbatore District.
- 3.The Superintendent of Central Prison,
Central Prison, Coimbatore District.
- 4.The Inspector of Police,
C2 Race Course Police Station,
Coimbatore District.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus to produce the body of the detenu by name Joshwa Devapriyan, son of John Peter, aged 23 years, presently confined at Central Prison, Coimbatore, before this Court and set him at liberty forthwith, after calling for the records

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pertaining to the detention order dated 15.03.2023 in C.No.28/G/IS/2023 passed by the 2nd respondent, quash the same.

For Petitioner : Mr.S.Bharanidharan
For Respondents : Mr.E.Raj Thilak
Additional Public Prosecutor

ORDER

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

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

2. When the captioned HCP was listed for Admission on 25.04.2023, the following proceedings/order was made:

'H.C.P.No.556 of 2023

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 31.03.2023 inter alia assailing a detention order dated 15.03.2023 bearing reference No.C.No.28/G/IS/2023 made by 'second respondent' [hereinafter 'Detaining Authority' for the



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sake of convenience and clarity]. To be noted, fourth respondent is the Sponsoring Authority.

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

3. Mr.S.Bharanidharan, learned counsel on record for habeas corpus petitioner is before us. Learned counsel expresses regret for not representing the matter in the previous listing on 17.04.2023. Learned counsel for petitioner submits that ground case qua the detenu is for an alleged offences under Sections 147, 148, 302, 307 and 506(ii) of 'Indian Penal Code, 1860 (Act 45 of 1860)' ['IPC' for brevity] in Crime No.82 of 2023 on the file of C-2, Race Course Police Station, Coimbatore District.

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 the detaining authority without any material arrived at the subjective satisfaction by stating that there is a real possibility of the detenu coming out, which reflects non-application of mind.

6. Prima facie case made out for admission. Admit. Issue



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Rule nisi returnable by four weeks.

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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 proceedings/order dated 25.04.2023 captures all essentials i.e., essential facts imperative for appreciating this final order and therefore we are not setting out the facts again. Suffice to say that the aforementioned Admission Board order dated 25.04.2023 shall now be read as an integral part and parcel of the instant final order. This also means that the short forms, short references and abbreviations used in the aforementioned Admission Board order will continue to be used in the instant final order also.

4. Before we proceed further, we make it clear that 'detention order dated 15.03.2023 bearing reference C.No.28/G/IS/2023 made by the detaining authority' shall hereinafter be referred to as the 'impugned preventive detention order' for the sake of convenience and clarity.



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5. Mr.S.Bharanidharan, learned counsel on record for petitioner and Mr.E.Raj Thilak, learned Additional Public Prosecutor for all the respondents are before us.

6. As would be evident from paragraph 5 of the 25.04.2023 Admission Board order, at the time of admission, learned counsel for petitioner posited his challenge against the impugned preventive detention order on the ground that the detaining authority arrived at subjective satisfaction qua real possibility of detenu coming out on bail without any material, however, in the Final Hearing Board today, learned counsel for petitioner changed his line of attack qua his campaign against the impugned preventive detention order and submitted that the Seizure Mahazar pertaining to the ground case furnished in the grounds booklet is completely not readable. Learned counsel drew our attention to page No.67 of the grounds booklet and a scanned reproduction of the same is as follows:



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கைப்பற்றியதன் மகதூர்	
1. காவல் நிலையத்திலின் பெயர், பிறந்த திகதி, உயரம், எடையம்	1. காவல் நிலையத்திலின் பெயர்: காவல் நிலையத்திலின் பெயர் பிறந்த திகதி: 02/02/2019 உயரம்: 1.60m எடையம்: 50kg
2. கைப்பற்றிய தேதி மணி இடம்	2. கைப்பற்றிய தேதி: 19/02/2019 மணி: 12:00 இடம்: காவல் நிலையத்திலின் பெயர்
3. யாரிடமிருந்து கைப்பற்றப்பட்டது	3. யாரிடமிருந்து கைப்பற்றப்பட்டது: காவல் நிலையத்திலின் பெயர்
4. யாரால் கைப்பற்றப்பட்டது	4. யாரால் கைப்பற்றப்பட்டது: காவல் நிலையத்திலின் பெயர்
5. கைப்பற்றிய சொத்தின் விவரம்	5. கைப்பற்றிய சொத்தின் விவரம்: காவல் நிலையத்திலின் பெயர்
6. கைப்பற்றிய பொருள் உடன் இருந்த சாட்சிகளின் விவரம்	6. கைப்பற்றிய பொருள் உடன் இருந்த சாட்சிகளின் விவரம்: காவல் நிலையத்திலின் பெயர்
7. கைப்பற்றிய அதிகாரியின் கையொப்பம் மற்றும் பதவி	7. கைப்பற்றிய அதிகாரியின் கையொப்பம் மற்றும் பதவி: காவல் நிலையத்திலின் பெயர்

உண்மை நகல்

காவல் நிலையம் (கடம்கி ஒழுங்கி)
கோவை மாநகர்

காவல் நிலையம் (கடம்கி ஒழுங்கி)
கோவை மாநகர்

காவல் நிலையம் (கடம்கி ஒழுங்கி)
கோவை மாநகர்

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



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8. We have no hesitation in persuading ourselves to say that detenu's sacrosanct constitutional right to make an effective representation against the impugned preventive detention order has been impaired owing to the aforementioned copy which is not readable at all. This means that there is infraction of constitutional safeguard ingrained in Article 22 (5) of the Constitution of India leading to the inevitable sequitur that impugned preventive detention order deserves to be dislodged.

9. Ergo, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 15.03.2023 bearing reference C.No.28/G/IS/2023 made by the second respondent is set aside and the detenu Thiru.J.Joshwa Devapriyan, aged 23 years, Son of Thiru.John Peter, 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.)
19.09.2023

Index : Yes/No
Neutral Citation : Yes/No
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P.S: Registry to forthwith communicate this order to Jail authorities in Central Prison, Coimbatore.

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To

- 1.The Secretary to the Government,
Home, Prohibition and Excise Department,
Fort St. George, Chennai – 9.
- 2.The Commissioner of Police,
Office of Commissioner of Police,
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C2 Race Course Police Station,
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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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