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HCP No.563 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.08.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

H.C.P.No.563 of 2023

Dhatchayani
W/o.Saravanan

.. Petitioner

Vs.

1. The Secretary to Government
Home, Prohibition and Excise Department
Secretariat
Fort St.George
Chennai-600 009.
2. The District Collector and District Magistrate
Cuddalore District
Cuddalore.
3. The Superintendent of Police
Cuddalore
Cuddalore District.
4. The Superintendent of Prison
Central Prison - Cuddalore
Cuddalore District.
5. State rep. by its
The Inspector of Police
Cuddalore - PEW Police Station
Cuddalore District.



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..Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus to call for the entire records relating to the petitioner's husband detention under Tamil Nadu Act 14 of 1982 vide detention order dated 02.03.2023 on the file of the second respondent herein made in proceedings Memo C3/D.O/02/2023, quash the same as illegal and consequently, direct the respondents herein to produce the petitioner's husband namely, Saravanan, son of Balu @ Balakrishnan, aged 52 years before this Hon'ble High Court and set the petitioner's husband at liberty from detention, now the petitioner's husband detained at Central Prison, Cuddalore.

For Petitioner	:	Mr.D.Balaji representing Mr.R.Sasikumar
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 12.04.2023, this Court made the following order:

'Captioned Habeas Corpus Petition has been filed in this Court on 31.03.2023 inter alia assailing a detention order dated 02.03.2023 bearing reference C3/D.O./02/2023 made by 'second respondent' [hereinafter 'Detaining Authority' for the sake of



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convenience and clarity]. To be noted, fifth respondent is the Sponsoring Authority.

2. Wife of the detenu is the petitioner.

3. Mr. R. Sasikumar, learned counsel on record for petitioner is before us. Learned counsel for petitioner submits that ground case qua the detenu was initially registered for an offence under Sections 4(1)(aaa) and 4(1-A) of Tamil Nadu Prohibition Act, 1937 in Crime No.134 of 2023 on the file of Cuddalore Prohibition Enforcement Wing.

4. The aforementioned detention order has been made on the premise that the detenu is a 'Bootlegger' under Section 2(b) 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 some pages in the grounds booklet furnished to the detenu are illegible 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.'



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2. The aforementioned order made in the 12.04.2023 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 five adverse cases and one ground case. The ground case which constitutes substantial part of substratum of the impugned preventive detention order is Crime No.134 of 2023 on the file of Cuddalore Prohibition Enforcement Wing for alleged offences under Sections 4(1)(aaa), 4(1-A) of 'the Tamil Nadu Prohibition Act, 1937' [hereinafter 'TNP Act' for the sake of brevity, convenience and clarity]. 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.

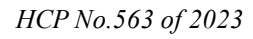
4. Mr.D.Balaji, learned counsel representing the counsel on record for petitioner and Mr.E.Raj Thilak, learned State Additional Public Prosecutor for all respondents are before us.



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5. At the time of admission i.e., in the Admission Board, the point that some pages in the grounds booklet furnished to the detenu are illegible and this prevented the detenu from making an effective representation was urged. In the final hearing today, elaborating on the same point learned counsel for petitioner drew our attention to Page No.111 of grounds booklet which is a copy of list of properties sent to learned Magistrate and submitted that it is found to be illegible / not readable resulting in right of detenu to make an effective representation against the impugned preventive detention order getting impaired. A scanned reproduction of the Page No.111 of grounds booklet is as follows:



சு. கண்ணப்பன் நகுலம்
காரைக்காலம்
மதுரைக்கு அனுப்புகிறேன்.



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6. We had the benefit of perusing the grounds booklet served on the detenu. As this turns on records, learned Prosecutor really does not have much of a say. We have no difficulty in accepting the argument of the learned counsel for petitioner that a crucial and critical document is completely illegible. The argument that this has impaired the rights of the detenu to make an effective representation qua impugned preventive detention order is also accepted as it is a sequitur qua this point. To be noted, right of the detenu to make an effective representation qua impugned preventive detention order is a constitutional safeguard ingrained in Article 22(5) of Constitution of India. As there is infraction of this constitutional safeguard, we have no difficulty in saying that the impugned preventive detention order is vitiated and it deserves to be dislodged.

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

8. Apropos, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 02.03.2023 bearing reference No.C3/D.O./02/2023 made by the second respondent is set aside and the



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detenu Thiru.Saravanan, aged 52 years, male, son of Thiru.Balu @
Balakrishnan, 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.)
04.08.2023

Index : Yes / No

Speaking / Non-speaking order

Neutral Citation : Yes / No

mk

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

To

1. The Secretary to Government
Home, Prohibition and Excise Department
Secretariat, Fort St.George
Chennai-600 009.
2. The District Collector and District Magistrate
Cuddalore District
Cuddalore.
3. The Superintendent of Police
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High Court, Madras.



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R.SAKTHIVEL, J.,

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