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H.C.P.No.554 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.554 OF 2023

Pushpa Valli

.. Petitioner

VS

1.The Additional Chief Secretary to Government
Home, Prohibition and Excise Department
Secretariat,
Chennai – 600 009.

2.The Commissioner of Police
Greater Chennai,
Chennai.

3.The Superintendent of Prison
Central Prison
Puzhal,
Chennai – 600 066.

4.The Inspector of Police
Anti Vice Squad – II
Greater Chennai Police
Chennai.

.. Respondents



H.C.P.No.554 of 2023

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 in connection with the order of detention passed by the second respondent dated 09.01.2023 in No.13/BCDFGISSSV/2023 against the petitioner's son Tamilarasan @ Manikandan, M/A.29, S/o.Dhamodaran, who is confined at Central Prison, Puzhal, Chennai and to set aside the same and consequently direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner : Mr.M.V.Bibin Mahesh

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 27.04.2023, this Court made the following order:

*'There is no representation for the petitioner.
However, considering that this is Habeas Corpus petition admission and considering that there is only one more day left before the Court breaks for summer vacation, we examine the case file.'*



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2. *Captioned Habeas Corpus Petition has been filed in this Court on 31.03.2023 inter alia assailing a detention order dated 09.01.2023 bearing reference No.13/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. *Mother of detenu is the petitioner.*

3. *The ground case qua the detenu is for alleged offences under Sections 3(2)a, 4(1), 5(1)a, 6(1), 7(1) of ITP Act in Crime No.06 of 2022 on the file of Anti Vice Squad-II, Chennai.*

4. *The aforementioned detention order has been made on the premise that the detenu is a 'Immoral Traffic Offender' under Section 2(g) 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 similar case bail order furnished to*



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the detenu was not properly translated 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 27.04.2023 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 detention order is Crime No.06 of 2022 on the file of Anti Vice Squad-II, Chennai for the alleged offences under Sections 3(2)a, 4(1), 5(1)a, 6(1) and 7(1) of the Immoral Traffic (Prevention) Act, 1956. Owing to the nature of the challenge to the impugned 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.V.Bibin Mahesh, learned counsel on record for petitioner and Mr.E.Raj Thilak, learned State Additional Public Prosecutor for all respondents are before us.

5.In the Admission Board, campaign against impugned preventive detention order was predicated on the point that similar case bail order furnished to the detenu was not properly translated which prevented the detenu from making an effective representation. To be noted, this is captured in paragraph 5 of the Admission Board order dated 27.04.2023. Be that as it may, in the Final Hearing Board today, Mr.M.V.Bibin Mahesh, learned counsel on record for petitioner posited his argument on one point and that one point is the கைது குறிப்பாணை (page Nos.191 and 193) of the grounds booklet does not contain signature of the witness. Elaborating on this point, learned counsel drew our attention to page Nos.191 and 193 of grounds booklet and submitted that arrest intimation was not communicated to the detenu's mother as mentioned in the கைது குறிப்பாணை and this is buttressed by the witness signature column being left blank in கைது குறிப்பாணை. On perusing the grounds booklet, we find that the submission of learned counsel is correct.



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6.Learned Prosecutor submitted to the contrary and learned

Prosecutor submitted that the arrest intimation has been given by way of a 'Short Messaging Service' [SMS]. We are not entering into this factual dispute arena or the question as to whether the arrest intimation can be given by way of SMS. We are proceeding on the simple point that 'சாட்சியின் கையெழுத்து' column in கைது குறிப்பாணை is blank which means the benefit of doubt has to be given to the detenu. If the benefit of doubt is given to the detenu as we are concerned with Arrest Intimation Form in the ground case which constitutes substantial portion of substratum of the impugned prevention detention order, we have no hesitation in saying that the rights of the detenu to make an effective representation which is a constitutional guarantee ingrained in Clause 5 of Article 22 of the Constitution of India has been impaired. In this regard, we also remind ourselves of Section 41-B(b)(i) of 'The Code of Criminal Procedure, 1973 (2 of 1974)' [hereinafter 'Cr.PC' for the sake of brevity and clarity] which makes it mandatory that memorandum of arrest should be attested by atleast one witness. To be noted, Section 41-B(b)(i) of Cr.PC reads as follows:



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'41-B. Procedure of arrest and duties of officer making arrest.- Every police officer while making an arrest shall -

(a)

(b) prepare a memorandum of arrest which shall be -

(i) attested by at least one witness, who is a member of the family of the person arrested or a respectable member of the locality where the arrest is made;'

Sequitur is, impugned preventive detention order 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.Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 09.01.2023 bearing reference Memo No.13/BCDFGISSSV/2023 made by the second respondent is set aside and the detenu Thiru. Tamilarasan @ Manikandan, aged 29 years, son of Thiru. Damodharan is directed to be set at liberty forthwith, if not required



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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/No

Neutral Citation : Yes/No

Speaking / Non-speaking order

TK

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



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To

- 1.The Additional Chief Secretary to Government
Home, Prohibition and Excise Department
Secretariat,
Chennai – 600 009.
- 2.The Commissioner of Police
Greater Chennai,
Chennai.
- 3.The Superintendent of Prison
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- 4.The Inspector of Police
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Chennai.
- 5.The Public Prosecutor
High Court, Madras.



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