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H.C.P.No.564 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.08.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

H.C.P.No.564 of 2023

Santhi
W/o.Babu

.. Petitioner

Vs.

1. The Additional Chief Secretary to Government
Home, Prohibition and Excise Department
Fort St.George
Chennai-600 009.
2. Commissioner of Police
Greater Chennai.
3. The Superintendent
Central Prison
Puzhal, Chennai.
4. The Inspector of Police
J-7, Velachery Police Station
Chennai.

..Respondents

Petition filed under Article 226 of the Constitution of India praying
for issuance of a writ order or direction in the nature of WRIT OF HABEAS

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CORPUS, to call for the records relating to the detention order passed by the second respondent pertaining to the order made in BCDFGISSSV No.59/2023 dated 03.03.2023 in detain the detenu under 2(f) of Tamil Nadu Act 14 of 1982 as a Goonda and quash the same and direct the respondent to produce the detenu Sathish S/o. Babu aged about 38 years who is detained at Central Prison, Puzhal before this Honble Court and set him at liberty.

For Petitioner : Mr.G.Nirmal Krishnan
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:

'H.C.P.No.564 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 03.04.2023 inter alia assailing a detention order dated 03.03.2023 bearing reference BCDFGISSSV.No.59/2023 made by



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'second respondent' [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 147, 148, 341, 294(b), 332 and 307 of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] in Crime No.53 of 2023 on the file of J-7 Velachery 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 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 Admission Board order captures all essentials that are imperative for appreciating this order and therefore we are not setting out the same again in this order. Suffice to say that aforementioned Admission Board order shall be read as an integral part and parcel of this order. Be that as it may, we are using the short forms, short references and abbreviations used in the Admission Board order in this order also for the sake of convenience and clarity. To be noted, 'detention order dated 03.03.2023 bearing reference BCDFGISSSV No.59/2023 made by the Detaining Authority shall hereinafter be referred to as 'impugned preventive detention order' in this order for the sake of brevity, convenience and clarity.

3. Mr.G.Nirmal Krishnan, learned counsel on record for petitioner and Mr.E.Raj Thilak, learned State Additional Public Prosecutor for all respondents are before us.

4. A perusal of paragraph No.5 of Admission Board order will bring to light that at the time of admission, learned counsel for HCP petitioner had posited his challenge to the impugned preventive detention order on the



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ground that some pages in the grounds booklet are illegible but today, Mr.G.Nirmal Krishnan, learned counsel on record for HCP petitioner changed the line of attack and submitted that subjective satisfaction arrived at by the Detaining Authority qua imminent possibility of the detenu being enlarged on bail is impaired.

5. Elaborating on the above argument, learned counsel submitted that aforementioned subjective satisfaction has been arrived at by the Detaining Authority by relying on a special report of the Sponsoring Authority (4th respondent) which says that detenu's brother-in-law one Paul Raj is taking steps to file a bail petition for the detenu. This special report has been furnished to the detenu as part of the grounds booklet and it is at Page Nos.217 to 219. Adverting to the special report, learned counsel submitted that it does not contain a date. Learned counsel pointed out that even the Sponsoring Authority's signature does not contain the date.

6. Learned Prosecutor submitted to the contrary and submitted that special report only records what the detenu's brother-in-law had said.

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7. We carefully considered the rival submissions. We find that the impugned preventive detention order has been served on the detenu on 04.03.2023 but grounds of impugned preventive detention order and grounds booklet have been served on the detenu only on 07.03.2023. Therefore, there is a lurking doubt as to whether the special report was actually made post impugned preventive detention order or much prior to the impugned preventive detention order or on some other remote day which is not a very relevant date qua imminent possibility of the detenu being enlarged on bail. To be noted, as regards detenu being enlarged on bail, imminence is very critical and this Court has repeatedly held that imminence is qua probability and not just qua time. In such circumstances, benefit of doubt has to be given to the detenu. If the benefit of doubt is given to the detenu, subjective satisfaction of Detaining Authority gets impaired and impugned preventive detention order gets vitiated. Impugned preventive detention order gets vitiated means that the same is liable to be dislodged in the habeas legal drill on hand.



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

9. Apropos, the further sequitur is, captioned HCP is allowed, impugned preventive detention order dated 03.03.2023 bearing reference BCDFGISSSV No.59/2023 made by the second respondent is set aside and the detenu Thiru.Sathish, male, aged 38 years, son of Thiru.Babu, 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.)

23.08.2023

Index : Yes / No

Speaking / Non-speaking

Neutral Citation : Yes / No

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

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

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To

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5. The Public Prosecutor
High Court, Madras.

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