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H.C.P.No.666 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.08.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

H.C.P.No.666 of 2023

Pushpalatha

.. Petitioner/Detenu's wife

Vs

1. The Secretary to Government
Home, Prohibition and Excise Department
Secretariat
Fort St.George, Chennai – 600 009.

2. The Commissioner of Police
Avadi City, Avadi
Chennai

3. The Superintendent
Central Prison
Puzhal, Chennai

4. The Inspector of Police
Anti Land Grabbing Special Cell
CCB, Avadi
Chennai

.. Respondents

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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 petitioner's husband namely Edwin, son of Michael, aged about 44 years, who is now detained in Central Prison, Puzhal, Chennai before this Court and set him at liberty forthwith by calling for the records pursuant to the detention order in Memo No.49/BCDFGISSSV/2023 dated 23.02.2023 on the file of the 2nd respondent herein and quash the same.

For Petitioner : Mr.K.Anandharaja
For Respondents : Mr.E.Raj Thilak
Additional Public Prosecutor

ORDER

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

Captioned 'Habeas Corpus Petition' [hereinafter 'HCP' for the sake of convenience and clarity] has been filed seeking a direction to produce the petitioner's husband Edwin, son of Michael, aged about 44 years, who is now detained in Central Prison, Puzhal, Chennai before this Court and set him at liberty.

2. When the captioned HCP was listed in the Admission Board on 26.04.2023, this Court made the following order:

'Captioned Habeas Corpus Petition has been filed in this Court on 05.04.2023 inter alia assailing a detention order dated



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23.02.2023 bearing reference No.49/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. Wife of detenu is the petitioner.

3. Learned counsel for petitioner submits that ground case qua the detenu is for alleged offences under Sections 419, 465, 467, 468, 471 read with 109 of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] in Crime No.13 of 2022 on the file of Central Crime Branch, Anti Land Grabbing Special Cell, Avadi.

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 subjective satisfaction arrived at by the Detaining Authority regarding the imminent possibility of the detenu being enlarged on bail is without any material.

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 26.04.2023 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 two adverse cases and one ground case. The ground case



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which constitutes substantial part of substratum of the impugned preventive detention order is Crime No.13 of 2022 on the file of Central Crime Branch, Anti Land Grabbing Special Cell, Avadi for alleged offences under Sections 419, 465, 467, 468, 471 read with 109 of IPC. 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.K.Anandharaja, 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.

5. At the time of admission i.e., in the Admission Board, learned counsel for the petitioner raised the point that subjective satisfaction arrived at by the Detaining Authority regarding the imminent possibility of the detenu being enlarged on bail is without any material but today learned counsel for petitioner has submitted that the Arrest Intimation Form annexed at page 457 of the grounds booklet furnished to the detenu is not legible and readable, which prevented the detenu from making an effective



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representation.

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6. Per contra, learned Additional Public Prosecutor has submitted that the Arrest Intimation Form is a prescribed format and hence the detenu can read and understand the content easily. Accordingly, he has prayed to dismiss the petition.

7. We have considered the submissions made on both sides. We have the benefit of perusing the grounds booklet and after perusing the same we are of the view that the aforementioned page i.e., Page No.457 of the grounds booklet which contains Arrest Intimation Form of the detenu is not legible. A scanned reproduction of page 457 of the grounds booklet is as follows:



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9. 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 aforementioned Arrest Intimation Form which is not legible. This means that there is infraction of constitutional safeguard ingrained in Article 22 (5) of the Constitution of India and hence the impugned preventive detention order is liable to be dislodged.

10. Resultantly, the captioned HCP is allowed. Impugned detention order dated 23.02.2023 bearing reference No.49/BCDFGISSSV/2023 made by the second respondent is set aside and the detenu Thiru.Edwin, aged 44 years, son of Thiru.Michael 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.)

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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, Puzhal

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To
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Home, Prohibition and Excise Department
Secretariat
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2. The Commissioner of Police
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5. The Public Prosecutor
Madras High Court
Chennai



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and
R.SAKTHIVEL, J.,

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