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H.C.P.No.586 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.586 of 2023

R.Selva Kumari

W/o.Ramesh

.. Petitioner / Wife of Detenue

Vs.

1.The State of Tamil Nadu

Represented by the Additional Chief Secretary,
Department of Home, Prohibition and Excise,
Fort St. George,
Chennai – 600 009.

2.The Commissioner of Police,

Avadi City Police Commissionerate,
Avadi,
Chennai – 600 054.

3.The Inspector of Police, Law and Order,

T-1 Ambattur Police Station,
Ambattur, Chennai.

4.The Superintendent,

Central Prison,
Puzhal, Chennai – 600 066.

... Respondents

Petition filed under Article 226 of the Constitution of India praying for
issuance of a writ of habeas corpus to call for the records made in



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BCDFGISSSV No.28/2023 dated 04.02.2023, on the file of second respondent herein and quash the same as illegal and direct the respondents to produce the Detenu Ramesh, S/o.Michael, 42 years now confined at Central Prison, Puzhal, Chennai before this Court and set him at liberty forthwith.

For Petitioner : Mr.S.Baskaran

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 the captioned 'Habeas Corpus Petition' ['HCP' for the sake of brevity].

2. When the captioned HCP was listed for admission before this Court on 17.04.2023 the following order was made:

'Captioned Habeas Corpus Petition has been filed in this Court on 05.04.2023 inter alia assailing a detention order dated 04.02.2023 bearing reference No.28/BCDFGISSSV/2023 made by 'second respondent' [hereinafter 'Detaining Authority' for the sake of convenience and clarity]. To be noted, third respondent is the Sponsoring Authority.

2. Wife of the detenu is the petitioner.



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3. *Learned counsel for petitioner submits that ground case qua the detenu is for alleged offences under Sections 3(2)a, 5(1)a and 4(1) of the Immoral Traffic (Prevention) Act, 1956 [hereinafter 'ITP Act' for the sake of convenience and clarity] in Crime No.35 of 2023 on the file of T-1 Ambattur Police Station.*

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 the representation made by the wife of the detenu was not considered.*

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.'*

3. Before proceeding further we deem it appropriate to say that the 'preventive detention order dated 04.02.2023' made by the detaining authority which has been assailed in the captioned HCP shall be referred to



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as 'impugned preventive detention order' for the sake of convenience and clarity. It is also to be noted that other short forms and short references in the aforementioned admission Board order dated 17.04.2023 will continue to be used in the instant order also for the sake of convenience and clarity.

4. A reading of paragraph 5 of the Admission Board order will bring to light that at the time of admission the point that representation made by wife of the detenu has not been considered was projected, however today in the final hearing Board, learned counsel projected the arguments that a document indexed in the grounds booklet as bail petition of the detenu has not been furnished. This has impaired the detenu's right to make an effective representation is learned counsel's say.

5. Elaborating on the aforementioned point, learned counsel drew our attention to the index in the grounds booklet and serial No.23 thereat which reads as follows:

வ.எண்	பொருள்	பக்கம்	
		முதல்	வரை
23.	நீதிமன்றத்தில் பிணை கோரிய மனுவின் நகல்	99	



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6. Learned counsel drew our attention to page No.99 of the grounds booklet and a scanned reproduction of the same is as follows:

IN THE COURT OF JUDICIAL MAGISTRATE AT AMBATTUR

C/NO. 25 OF 2023
LN 20

Pameth and
ANO/From

Ans of P/ce.
P. Ambattur PS

MEMO FILED BY THE COUNSEL FOR PETITIONER/RESPONDENT

It is respectfully submitted that the Petitioner/Respondent herewith enclose court fees for Rs. 10/- Being the charges for taking Xerox copies and the same may be accepted and render justice.

Dated at Ambattur this 30th day of Jan 2023

சுமதி நகர்
சுமதி நகர்
T-1, சூழலாற்றல் அமைச்சு
சுமதி நகர், திருச்சி-63

சுமதி நகர்

Counsel for Petitioner/Respondent



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The above scanned reproduction speaks for itself. The reason is page No.99 of grounds booklet is a memo filed by the petitioner before jurisdictional Magistrate and it is not the bail petition.

7. Learned counsel also pointed out that the petitioner is working as a driver in a Hotel (travel unit) and his literacy level is not very high. Continuing this argument in this direction, learned counsel submitted that even the memo at page No.99 (wrongly described as petitioner's bail petition in the index) has not been translated. This has aggravated the impairment of detenu's right to make an effective representation qua impugned preventive detention order is learned counsel's further say.

8. In response to the aforementioned arguments, learned Additional Public Prosecutor submitted to the contrary by saying that it is the detenu's bail petition and it does not impact the detenu in terms of making an effective representation.



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9. We carefully considered the rival submissions and we find that in the grounds of impugned preventive detention order a portion of paragraph 3 reads as follows:

'3. I am aware that Thiru Ramesh is in remand in T-1 Ambattur Police Station Cr.No.35/2023 and lodged at Central Prison, Puzhal, Chennai. He has moved a bail application for in T-1 Ambattur Police Station Cr.No.35/2023 before the Judicial Magistrate Court, Ambattur in Crl.M.P.No.221 of 2023 and the same was dismissed on 25.01.2023. ...'

Therefore, the Detaining Authority has relied on petitioner's bail petition and dismissal of the same on 25.01.2023 in making the impugned preventive detention order. It is also clear that the detaining authority has relied upon the same and the bail petition moved by the detenu forms an important part of substratum of the grounds of impugned preventive detention order. Therefore, the arguments of the counsel for petitioner that the right of the detenu to make an effective representation qua impugned preventive detention order has been impaired is sustained. This means that the constitutional safeguard ingrained in Article 22(5) of the Constitution of India has been subjected to infraction. This infraction means that the impugned preventive detention order is vitiated and is vulnerable for being dislodged in this Habeas legal drill.



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10. Ergo, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 04.02.2023 bearing reference 28/BCDFGISSSV/2023 made by the second respondent is set aside and the detenu Thiru.Ramesh, aged 42 years, son of Thiru.Michael, now detained in Central Prison, Puzhal, Chennai is directed to be set at liberty forthwith unless required 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
Speaking order
Neutral Citation : Yes
rsi

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,
Department of Home, Prohibition and Excise,
Fort St. George,
Chennai – 600 009.
- 2.The Commissioner of Police,
Avadi City Police Commissionerate,
Avadi,
Chennai – 600 054.
- 3.The Inspector of Police, Law and Order,
T-1 Ambattur Police Station,
Ambattur, Chennai.
- 4.The Superintendent,
Central Prison,
Puzhal, Chennai – 600 066.
- 5.The Public Prosecutor
Madras High Court, Chennai



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

rsi

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