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H.C.P.No.645 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.08.2023

CORAM

THE HONOURABLE MR.JUSTICE **M.SUNDAR**
and
THE HONOURABLE MR.JUSTICE **R.SAKTHIVEL**

H.C.P.No.645 of 2023

Ramesh,
S/o.Sekar

.. Petitioner

Vs

1. The Additional Chief Secretary to Government
Home, Prohibition and Excise (XVI) Dept.,
Fort St.George, Secretariat,
Chennai-600 009.
2. The Commissioner of Police
Office of the Commissioner of Police
Avadi City.
3. The Superintendent of Prison
Central Prison at Puzhal
Chennai-600 066.
4. The Inspector of Police
T-6, Avadi Police Station
Thiruvallur District.

.. Respondents



H.C.P.No.645 of 2023

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 detention order in BCDFGISSSV No.73/2023 dated 22.03.2023 on the file of the 2nd respondent and set aside the same and direct the respondents herein to produce the body of the detenu, Ramesh, son of Sekar, aged 38 years, now confined in Central Prison at Puzhal, Chennai, before this Hon'ble Court and set him at liberty.

For Petitioner : Mr.M.Mohamed Saifulla
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 20.04.2023, this Court made the following order:

'Captioned Habeas Corpus Petition has been filed in this Court on 10.04.2023 inter alia assailing a detention order dated 22.03.2023 bearing reference BCDFGISSSV No.73/2023 made by 'second respondent' [hereinafter 'Detaining Authority' for the sake of convenience and clarity]. To be noted, fourth respondent is the Sponsoring Authority.

2. Detenu is the petitioner.

3. Learned counsel for petitioner submits that ground case



qua the detenu is for alleged offences under Sections 8(c) read with 20(b)(ii)(B) of the Narcotic Drugs and Psychotropic Substances Act, 1985 in Crime No.110 of 2023 on the file of T-6 Avadi Police Station.

4. The aforementioned detention order has been made on the premise that the detenu is a 'Drug Offender' under Section 2(e) 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 certain 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.'

2. The aforementioned order made in the 20.04.2023 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



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the Admission listing shall be used in the instant order also.

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3. There is no adverse case. This solitary case which is the sole substratum of the impugned preventive detention order is Crime No.110 of 2023 on the file of T-6 Avadi Police Station for the alleged offences under Sections 8(c) read with 20(b)(ii)(B) of NDPS Act. 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. Ms.R.Subadra Devi, learned counsel on record for petitioner and Mr.E.Raj Thilak, learned State Additional Public Prosecutor for all respondents are before us.

5. As would be evident from the Admission Board order dated 20.04.2023, at the time of admission, learned counsel for HCP petitioner projected the point that certain pages in the grounds booklet furnished to the detenu are illegible. Elaborating on the above submission, learned counsel for petitioner drew our attention to a portion of paragraph No.3 of grounds



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of detention which reads as follows:

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'3. In a similar case registered in D1 Triplicane Police Station Cr.No.932/2020 u/s 8(c) r/w 20(b)(ii)(B) of NDPS Act 1985 bail was granted by the Principal Special Court under EC & NDPS Act, Chennai in Crl.M.P.No.1842/2020. Hence, I infer that there is a real possibility of his coming out on bail in T-6 Avadi Police Station Crime No.110/2023 case by filing bail application before the appropriate Court, since in a similar case, the bail was granted by the Court after a lapse of time'

6. In this regard, learned counsel submits that a copy of similar case bail order furnished in the grounds booklet at Page Nos.56 to 58 is not readable.

7. The aforementioned point turns heavily on records and therefore learned Prosecutor really does not have much of a say.

8. This Court had the benefit of perusing the grounds booklet and this Court is of the view that the aforementioned similar case bail order which is at page Nos.56 to 58 is not readable. A scanned reproduction of the same is

Page Nos.5/10



as follows:

[illegible]

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சுயம்சு நகர்,

10-11

செலவு, செலாவணி-500.002

பொதுமக்கள் கவனம்

מת

ကလေးများ၏

பல்கலைக்கழகம் திறக்கப்பட்டது.

[illegible]

2. தனது/அதிரியை எதிர் 439 குடும்பங்களாகப் பிரிக்கவில்லை என்றும் இதை
கொடுக்கக்கூடாது என்றும்
3. தனது பழைய பஞ்சாயத்துக்குரிய பஞ்சாயத்து/சுயேச்சு 2200 கிலோ கஞ்சா
காயை கொடுக்கக்கூடாது என்றும் பஞ்சாயத்து/சுயேச்சு 2200 கிலோ கஞ்சா
காயை 3 சதுர அடி (3 சதுர மீட்டர்) பரப்பளவில் தான் குறுக்கே வைக்கக்கூடாது 7.7.2020
ஆம் ஆண்டு காலமுதல் அனுப்பப்பட்டிருக்கிறது. மேலதான ஒரு சதுரமேட்டர் காயை, எவ்வித
தொகை அளவு இல்லாமல் எவ்வளவு வேண்டுமென்று வறுக்கிட்டு அதை கொடுப்பதைச்
செய்து வருவதாகவும் எதிர்த்துள்ளதாகவும் தெரியுமா? நிதித் துறைக்கு கொடுக்கக்கூடியதாகவும்
அதை நிதித் துறைக்கு கொடுக்கக்கூடிய பஞ்சாயத்து இந்த இந்த நிதியுள்ளும் நிதிக்குட்பட்ட
நிதித் துறைக்குக் கொடுக்கக்கூடிய பஞ்சாயத்து என்றும் தெரியுமா? தனது பஞ்சாயத்து
3. குறுக்கே வைக்கக்கூடிய பஞ்சாயத்து. இந்த பஞ்சாயத்து கொடுக்கக்கூடிய
பஞ்சாயத்து

— உணர்வுநகரம்

[illegible][illegible][illegible][illegible][illegible]

சிறைகளில் இருந்து வெளியே வந்தவர்களுக்கு உதவியாக அரசு நடவடிக்கை எடுக்க வேண்டும்.

[illegible]

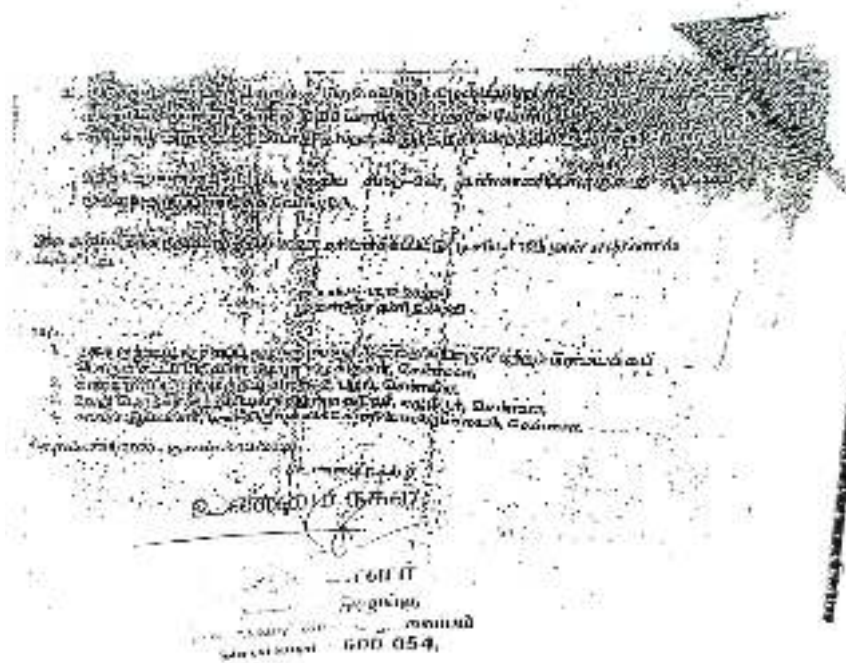
உயிரினங்களின் பற்றாக்குறை



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9. This means that right of the detenu to make an effective representation as against the impugned preventive detention order has been impaired. Such a right is sanctus constitutional right ingrained in Article 22(5) of the Constitution of India. This constitutional right of the detenu has been subjected to infraction. This has vitiated the impugned preventive detention order. Therefore, the impugned preventive detention order is liable to be dislodged.



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10. Ergo, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 22.03.2023 bearing reference BCDFGISSSV No.73/2023 made by the second respondent is set aside and the detenu Thiru.Ramesh, male, aged 38 years, son of Thiru.Sekar, 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.)

01.08.2023

Index : Yes

Neutral Citation : Yes

Speaking

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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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