



H.C.P.NO.621 OF 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.08.2023

CORAM

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

H.C.P.NO.621 OF 2023

Nirmala @ Bhavani

... Petitioner

Vs.

1.State of Tamil Nadu

Rep. By the Additional Chief Secretary
to Government
Home, Prohibition and Excise Department
Fort St. George, Chennai – 600 009.

2.The Commissioner of Police

The Greater Chennai City
Vepery,
Chennai – 600 007.

3.The Superintendent of Prison

Central Prison
Puzhal, Chennai – 600 066.

4.The Inspector of Police

G-7, Chetpet Police Station,
Chennai.

... Respondents

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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 relating to the detention order in Memo No.62/BCDFGISSSV/2023 dated 14.03.2023 passed by the second respondent under the Tamil Nadu Act 14 of 1982 and set aside the same and direct the respondents to produce the petitioner's son Sagayam @ Devasagayam S/o. Johnson aged about 36 years the detenu, now confined in Central Prison, Puzhal, Chennai before this Court and set the petitioner's son Sagayam @ Devasagayam S/o. Johnson aged about 36 years the detenu herein at liberty.

For Petitioner : Mr.S.Senthilvel
for Mr.K.Bommuraj

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' ['HCP' for the sake of brevity] was listed in the Admission Board on 20.04.2023, this Court made the following order:



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'Captioned Habeas Corpus Petition has been filed in this Court on 10.04.2023 inter alia assailing a detention order dated 14.03.2023 bearing reference BCDFGISSSV No.62/2023 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 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), 323, 397, 336, 427 and 506(ii) read with 34 of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] in Crime No.20 of 2023 on the file of G-7 Chetpet 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 certain documents 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 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



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dated 14.03.2023 bearing reference No.62/BCDFGISSSV/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.A perusal of paragraph 5 of the Admission Board order brings to light that at the time of admission, learned counsel posited his challenge to the impugned preventive detention order on the point that certain documents in the grounds booklet furnished to the detenu are not readable but in the final hearing Board today, learned counsel drew our attention to a portion of paragraph 4 of the grounds of impugned preventive detention order and that portion reads as follows:

'4... In a similar case registered at G-7 Chetpet Police Station Crime No.64/2022 under Sections 341, 294(b), 323, 392, 397, 336, 427, 506(ii), 34 of IPC bail was granted by the Court of learned Sessions Judge, Chennai, in Crl.M.P.No.6184/2022. Hence, I infer that there is a real possibility of his coming out on bail in G-7 Chetpet Police Station Crime No.20/2023 case by filing another bail



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application before the appropriate court, since in similarly placed case bail was granted by court after a lapse of time.'

Adverting to the aforementioned portion of paragraph 4 of the grounds of impugned preventive detention order, learned counsel submitted that subjective satisfaction arrived at by the Detaining Authority qua imminent possibility of the detenu being enlarged on bail is by relying on a bail order in Crl.M.P.No.6184 of 2022. It is submitted that this Crl.M.P.No.6184 of 2022 bail order has not been furnished to the detenu. Learned counsel for petitioner placed before us the grounds booklet served on the detenu to buttress his submission.

4.In response to the above argument, learned Prosecutor submitted that the bail order has in fact been furnished to the detenu at page Nos.151 to 153 of the grounds booklet. Learned Prosecutor submitted that only the Crl.M.P. number has been wrongly mentioned as Crl.M.P.No.8156 of 2022.

5.We carefully considered the submissions made on both sides. We find that this may not be a case of Crl.M.P. number being wrongly



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mentioned in the bail order made by learned XXIII Additional Sessions Judge

/ Vacation Sessions Judge, Chennai but it is a case where the Detaining

Authority has wrongly referred to CrI.M.P.No.6184 of 2022 in the impugned

preventive detention order (to be noted, relevant portion has been extracted

and set out supra). To be noted, when a detenu is baffled, his right to make

an effective representation against the impugned preventive detention order

gets impaired and it is further to be noted that from the confession statement

in the grounds booklet, we find that the literacy level of the detenu is 10th

Standard and he is a school drop out. In this backdrop, we have no hesitation

in saying that the detenu is likely to be baffled by different CrI.M.P. Numbers

in the grounds booklet and in the grounds of impugned preventive detention

order. Assuming for a moment, if it is presumed that the CrI.M.P number

given in the impugned preventive detention order is correct, it would lead to

the sequitur that an order relied on by the Detaining Authority has not been

furnished to the detenu. If it is flipped and if it is assumed that the CrI.M.P.

number in the impugned preventive detention order is erroneous, the

sequitur is non-application of mind by the Detaining Authority as the

Detaining Authority relied on some other CrI.M.P. number (not the bail order



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that was before him) and arrived at subjective satisfaction. We are setting out this to say that looked at from any perspective the arguments advanced by the learned counsel for petitioner endures to the benefit of the detenu in his campaign against the impugned preventive detention order. To put it differently it is 'heads I win, tails you loose ' situation qua toss of a coin.

6.Ergo, the sequitur is captioned HCP is allowed. Impugned preventive detention order dated 14.03.2023 bearing reference Memo No.62/BCDFGISSSV/2023 made by the second respondent is set aside and the detenu Thiru. Sagayam @ Devasagayam, aged 36 years, son of Thiru. Johnson 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.)
14.08.2023

Index : Yes

Neutral Citation : Yes

Speaking order

TK

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

To

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WEB COPY

- 1.The Additional Chief Secretary
to Government
Home, Prohibition and Excise Department
Fort St. George, Chennai – 600 009.
- 2.The Commissioner of Police
The Greater Chennai City
Vepery,
Chennai – 600 007.
- 3.The Superintendent of Prison
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- 4.The Inspector of Police
G-7, Chetpet Police Station,
Chennai.
- 5.The Public Prosecutor
Madras High Court,
Madras.



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AND
R.SAKTHIVEL, J.

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