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H.C.P.No.628 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.628 of 2023

Nalini
W/o.Immanuel

.. Petitioner / Wife of Detenue

Vs.

1.State Rep. by the Additional Chief Secretary
to the Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai – 600 009.

2.The Commissioner of Police,
O/o.Commissioner of Police,
Greater Chennai,
Vepery, Chennai – 600 007.

3.The Superintendent,
Central Prison,
Puzhal, Chennai – 600 066.

4.The Inspector of Police,
T-3 Korattur Police Station,
Korattur, 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 call for the records in connection with the order of detention passed by the second respondent dated 27.01.2023 vide Memo No.15/BCDFGISSSV/2023 against the petitioner's husband Thiru.Immanuel, S/o.Nagaraj, aged about 29 years and he is presently confined at Central Prison, Puzhal, Chennai and set aside the same and direct the respondents to produce the Detenu before this Court and set him at liberty.

For Petitioner : Mr.N.Selvarajan

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 on 20.04.2023 the following order was made in the admission Board:



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'Captioned Habeas Corpus Petition has been filed in this Court on 05.04.2023 inter alia assailing a detention order dated 27.01.2023 bearing reference No.15/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 the detenu is the petitioner.

3. Learned counsel for petitioner submits that ground case qua the detenu is for alleged offences under Sections 341, 294(b), 323, 336, 427, 397, 506(ii) of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] in Crime No.651 of 2022 on the file of T-3 Korattur 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 of the 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.



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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. A reading of the opening paragraph of the order in the admission Board will bring to light that captioned HCP has been filed assailing a detention order dated 27.01.2023 made by the detaining authority. This 'detention order dated 27.01.2023' shall be referred to as 'impugned preventive detention order' for the sake of convenience and clarity.

4. As would be evident from paragraph 5 of the aforementioned admission Board order dated 20.04.2023, at the time of admission the point that some pages in grounds booklet furnished to the detenu are illegible (not readable) was projected. However, in the final hearing Board today, Mr.N.Selvarajan, learned counsel predicated his campaign against the impugned preventive detention order on the point that detenu's right to make an effective representation qua impugned preventive detention order has been impaired. Elaborating his submission in this direction, learned counsel drew our attention to a portion of Paragraph 3 of the grounds of impugned



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preventive detention order, which reads as follows:

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'... Later, the Inspector of Police produced accused Thiru.Mani @ Ganja Mani, Thiru.Immanuvel and Thiru.Surya before the Court of Judicial Magistrate, Ambattur, Chennai on 29.12.2022 who ordered the accused to be remanded till 12.01.2023 and lodged them at Central Prison, Puzhal, Chennai, as remand prisoners. Further, his remand period was extended till 02.02.2023 periodically. ...'

5. Adverting to the aforementioned portion, learned counsel submitted that the detaining authority has noticed that the detenu who was remanded on 29.12.2022 remained incarcerated owing to periodic / regular extension of remand orders till 02.02.2023 but all the remand extension orders have not been annexed to the grounds booklet. This has impaired detenu's right to make an effective representation is learned counsel's say.

6. Responding to the aforementioned arguments, learned Additional Public Prosecutor drew our attention to page No.176 of the grounds booklet and submitted that one of the remand extensions was in another case before another Court and therefore the detenu was not produced before the learned



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Judicial Magistrate, Ambattur. This has been mentioned in the form of a booklet at page 176 is learned Additional Public Prosecutor's say.

7. We carefully considered the rival submissions. We find that mere mentioning of remand extension in another Court in another case will not serve the purpose. We are of the view that the remand extension order made by the other learned Magistrate in other case ought to have been furnished to the detenu, as the detaining authority has specifically adverted to the fact that the detenu who was remanded on 29.12.2023 remained incarcerated till 02.02.2023 owing to periodic extension of remand. This means that the argument of the learned counsel that rights of the detenu ingrained in Article 22(5) which finds statutory recognition under Section 8(1) of Act 14 of 1982 has been subjected to infraction has to be sustained. If this argument is sustained, the sequitur is, impugned preventive detention order gets vitiated and becomes liable for being dislodged on this point.

8. Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 27.01.2023 bearing reference 15/BCDFGISSSV/2023 made by the second respondent is set aside and the detenu Thiru.Immanuvel,



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aged 29 years, son of Thiru.Nagaraj, 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/No
Speaking order/Non-speaking order
Neutral Citation : Yes /No
rsi

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

To

- 1.The Additional Chief Secretary to the Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai – 600 009.
- 2.The Commissioner of Police,
O/o.Commissioner of Police,
Greater Chennai,
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M.SUNDAR, J.
and
R.SAKTHIVEL, J.

rsi

4.The Inspector of Police,
T-3 Korattur Police Station,
Korattur, Chennai.

5.The Public Prosecutor
Madras High Court, Chennai

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