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H.C.P.No.660 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.08.2023

Coram

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

H.C.P.No.660 of 2023

Latha

.. Petitioner

VS

1.The State of Tamil Nadu
Rep. by its Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai – 600 009.

2.The Commissioner of Police,
Avadi City, Chennai.

3.The Inspector of Police,
Central Crime Branch
Avadi City, Chennai

4. The Superintendent
Central Prison, Puzhal, Chennai

.. 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 relating to petitioner's husband detention under Tamil Nadu Act 14 of 1982 vide



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detention order dated 22.03.2023 on the file of the second respondent herein made in proceedings No.74/BCDFGISSSV/2023 and quash the same as illegal and consequently direct the respondents herein to produce the petitioner's husband namely Mohan, aged 49 years, son of Murugan before this Court and set him at liberty, now petitioner's husband is detained at Central Prison, Puzhal, Chennai – 600 066.

For Petitioner : Mr.Mohamed Saifulla
for Mr.C.C.Chellappan

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 24.04.2023, this Court made the following order:

'Captioned Habeas Corpus Petition has been filed in this Court on 17.04.2023 inter alia assailing a detention order dated 22.03.2023 bearing reference 74/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. To be noted, wife of the detenu is the petitioner.

3. Mr.C.C.Chellappan, learned counsel on record for habeas corpus petitioner is before us. Learned counsel for petitioner submits that ground case qua the



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detenu is for alleged offences under Sections 465, 467, 468, 471 read with 34 of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] altered to 419, 420, 465, 467, 468, 471 read with 34 of IPC in Crime No.05 of 2023 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 many of the pages in the booklet furnished to the detenu were 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.E.Raj Thilak, 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 24.04.2023 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.



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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.05 of 2023 on the file of Central Crime Branch, Anti Land Grabbing Special Cell, Avadi for the alleged offences under Sections 465, 467, 468, 471 read with Section 34 of IPC altered to 419, 420, 465, 467, 468, 471 read with 34 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.M.Mohamed Saifulla, 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. As would be evident from paragraph 5 of the Admission Board order dated 24.04.2023, at the time of admission, the point that many of the pages in the booklet furnished to the detenu were illegible, which prevented the detenu from making an effective representation was raised but in the final hearing, learned counsel drew our attention to a portion of paragraph 3 of the grounds of impugned preventive detention order and



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the same reads as follows:

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'3..... In a similar case registered in Greater Chennai Police, Central Crime Branch Crime No.10/2020 u/s.419, 420, 465, 467, 468, 471, 34, and 109 IPC bail was granted by accused Thiru.Edwin the Hon'ble High Court, Madras in Crl.O.P.No.15061/2020. Hence, I infer that it there is real possibility of his coming out on bail by filing another bail application for Avadi City, Central Crime Branch Cr.No.05/2023 before the appropriate court, since in similar cases bail is granted by the courts after a lapse of time.....'

6. It is clear from the aforementioned portion of paragraph 3 of the grounds of impugned preventive detention order that the detaining authority has relied on a bail order for arriving at aforementioned subjective satisfaction. It is a bail order of a Hon'ble Single Judge of this Court in Crl.O.P.No.15061 of 2020 (hereinafter 'Edwin's case' for convenience as Edwin is the petitioner in this case) but what has been furnished to the detenu at pages 463 and 465 of the grounds booklet is not the bail order but an order relaxing condition/s of bail. To be noted, copy of bail order has not been furnished to the detenu. Therefore, this clearly impairs the rights of the detenu to make an effective representation



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against the impugned preventive detention order and this further means that constitutional safeguard ingrained in Article 22(5) of the Constitution of India and recognised in Section 8(1) of Act 14 of 1982 has been subjected to infraction. This shows non-application of mind qua detenu authority and it also baffles the detenu multiplying the infraction of Article 22(5) constitutional principle which is statutorily recognised vide Section 8(1) of Act 14 of 1982.

7. In response to the above argument, learned Prosecutor submitted to the contrary saying that the offence in Edwin's case and the case on hand are comparable and what has happened is only a secretarial error.⁴

8. We carefully considered the submissions made on both sides. On a demurrer, even if the argument that it is a secretarial error is accepted, the Prosecutor's endeavour to sustain the impugned preventive detention order still does not cut ice as the bail order has not been furnished to the detenu impairing the constitutional right (to make an effective representation against a preventive detention order) which has been statutorily recognised as alluded to supra. This means that the impugned preventive detention order is vitiated and the same deserves to be dislodged.



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9. Ergo, the sequitur is, captioned HCP is allowed. Apropos, impugned preventive detention order dated 22.03.2023 bearing reference No.74/BCDFGISSSV/2023 made by the second respondent is set aside and the detenu Thiru.Mohan, aged 49 years, son of Thiru.Murugan, 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.)
08.08.2023

Index : Yes
Neutral Citation : Yes
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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, Chennai – 600 009.
2. The Commissioner of Police,
Avadi City, Chennai.
3. The Inspector of Police,
Central Crime Branch
Avadi City, Chennai
4. The Superintendent
Central Prison, Puzhal, Chennai
5. The Public Prosecutor,
High Court, Madras.



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

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