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H.C.P.No.698 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.09.2023

CORAM

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

H.C.P.No.698 of 2023

Monushree

.. Petitioner

Vs

1.State of Tamil Nadu rep. By its Secretary,
Prohibition and Excise Department,
Fort St. George, Chennai – 9.

2.The Commissioner of Police,
Avadi City.

3.The Superintendent of Prison,
Central Prison, Puzhal, Chennai.

4.The Inspector of Police,
Anti Land Grabbing Special Cell,
Central Crime Branch,
Avadi City, 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 of the detention dated 18.03.2023 in detention order No.70/BCDFGISSSV/2023 on the file of the second respondent herein and quash the same and direct the respondents herein to produce the body of the detenu Iniyavan, S/o.Yesuraj, Hindu, aged about 33 years,

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who is now confined in Central Prison, Puzhal, Chennai, before this Court and set him at liberty.

For Petitioner : Mr.S.Senthilvel
for Mr.R.Thamarai Selvan

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 captioned 'Habeas Corpus Petition' ['HCP' for the sake of brevity, convenience and clarity].

2. When the captioned HCP was listed for Admission on 28.04.2023, the following proceedings/order was made:

'H.C.P.No.698 of 2023

M.SUNDAR, J.,
and
M.NIRMAL KUMAR, J.,

(Order of the Court was made by M.SUNDAR, J.,)

Captioned Habeas Corpus Petition has been filed in this Court on 19.04.2023 inter alia assailing a detention order dated 18.03.2023 bearing reference No.70/BCDFGISSSV/2023 made by 'second respondent' [hereinafter 'Detaining Authority' for the sake of



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convenience and clarity]. To be noted, fourth respondent is the Sponsoring Authority.

2. Wife of detenu is the petitioner.

3. Learned counsel for the petitioner submits that the ground case qua the detenu is for alleged offences under Sections 406, 420 and 34 of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] in Crime No.25 of 2022 on the file of Central Crime Branch, EDF, 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 there is a delay in passing the impugned detention order since the detenu was arrested on 16.02.2023 but the impugned order was passed on 18.03.2023.

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. The aforementioned proceedings/order dated 28.04.2023 captures all essentials i.e., essential facts imperative for appreciating this final order and therefore we are not setting out the facts again. Suffice to say that the aforementioned Admission Board order dated 28.04.2023 shall now be read as an integral part and parcel of the



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instant final order. This also means that the short forms, short references and abbreviations used in the aforementioned Admission Board order will continue to be used in the instant final order also. In addition to the short references in the Admission Board order, the detention order dated 18.03.2023 bearing reference No.70/BCDFGISSSV/2023 made by the detaining authority shall hereinafter be referred to as 'impugned preventive detention order' for the sake of convenience and clarity.

4. As would be evident from Admission Board order, at the time of admission, learned counsel posited his challenge qua impugned preventive detention order on the ground that 'live and proximate link' between the grounds of detention and purpose of detention has snapped (though projected as delay in passing impugned preventive detention order). Today Mr.S.Senthilvel, learned counsel representing the counsel on record for HCP petitioner changed his line of attack in the final hearing and in his campaign against the impugned preventive detention order submitted that the same is vitiated by (a)non-application of mind qua detaining authority and (b)rights of detenu to make an effective representation have been subjected to infraction.



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Elaborating on this point, learned counsel drew our attention to two portions of the grounds of impugned preventive detention order which read as follows:

'Based on the above complaint, Thiru.D.Jayachandran, Inspector of Police, EDF, Central Crime Branch, Avadi Commissionerate, Chennai - 54 registered a case in Central Crime Branch, EDF, Avadi, in Cr.No.25/2022 u/s 406, 420, 34 IPC on 27.08.2022 at 1300 hours and took up investigation of the case.'

'Further, the arrest intimation of the accused Thiru.Iniyavan was given to his mother Tmt.Komala on the same day.'

5. Adverting to the aforementioned portions, learned counsel submitted that the first extract sets out the ground case which constitutes substantial portion of substratum of the impugned preventive detention order. In the second extracted portion, the detaining authority has proceeded on the basis that the arrest of the detenu in the ground case has been intimated to his mother Komala on the same day (to be noted the date of arrest 16.02.2023). Learned counsel drew our attention to the arrest memo (கைது அறிவிப்பு நழுவனா) furnished to the detenu as part of grounds booklet and a scanned reproduction of the same is as follows:



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தமிழ்நாடு காவல்துறை கைது அறிவிப்பு நபரின்		
1. கைது செய்யப்பட்ட நபரின் பெயர் மற்றும் விவரம்	கிளியட்ரன் .Y. டி/33 5/0 மாதிரி No 38/A, திண்டிவனம் துறைமுகம் 4755297 அமைதி-99.	
2. கைது செய்யப்பட்ட நபரின் விவரம் (பற்றி என்ன)	செய் CCB Cr No 25/2022	
3. சட்டம் (பற்றி என்ன)	U/s 406, 420 r/w 34 IPC	
4. கைது செய்யப்பட்ட நபரின் தகவல் / கைது செய்யப்பட்ட காரணம்	15th அமர்வு சபை	
5. கைது செய்யப்பட்ட இடம்	சென்னை சிறை	
6. கைது செய்யப்பட்ட நபர் மற்றும் பெயர்	16-02-2023 at 12:00 hrs	
7. கைது செய்யப்பட்ட இடம் (கைது செய்யப்பட்ட இடம்)	செய் 105th சென்னை	
8. கைது செய்யப்பட்ட நபர் அல்லது அல்லது இது குறித்து கைது செய்யப்பட்ட அல்லது அல்லது பெயர்	செய் 105th சென்னை	
9. கைது செய்யப்பட்ட நபரின் உட்கார்ந்த கைது செய்யப்பட்ட கைது		
10. கைது செய்யப்பட்ட நபர் ஏதேனும் நபர், விவரம் மற்றும் கைது செய்யப்பட்ட கைது (கைது செய்யப்பட்ட நபர், கைது செய்யப்பட்ட கைது)		
11. கைது செய்யப்பட்ட நபர் மற்றும் கைது செய்யப்பட்ட கைது	செய்	
12. கைது குறித்து எதிர்ப்பின் உருவம் / கைது குறித்து தகவல் பெறப்பட்ட கைது	செய் 105th சென்னை	

16/2/2023

கைது செய்யப்பட்ட நபரின் கைது

கைது செய்யப்பட்ட நபரின் கைது

11 உதவி காவல்துறை

INSPECTOR OF POLICE

ALGSC - CENTRAL CRIME BRANCH

AVADI COMMISNERATE,

CHENNAI - 600024

6. Adverting to the above and more particularly Sl. No.12 thereat, learned counsel submitted that even according to the



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sponsoring authority (fourth respondent), the arrest of the detenu in the ground case was intimated to his wife one Monushree and mother Y.Shyamala whereas the grounds of impugned preventive detention order proceeds on the basis that arrest intimation was given to detenu's mother Tmt.Komala.

7. In response to the aforementioned argument, learned Prosecutor submitted that it is a clerical/typographical error.

8. We carefully considered the rival submissions made on both sides. In preventive detention orders and challenge to the same in habeas legal drill, there is no trial and therefore it is imperative that aforementioned details are correctly set out, if that not be so, it affects the rights of the detenu to make an effective representation. This Court has repeatedly held that the right of the detenu to make an effective representation against the impugned preventive detention order is the constitutional safeguard and it is sacrosanct and it is ingrained in Article 22(5) of the Constitution of India. For the self same reason, we also have no difficulty in accepting the argument that there is non-application of mind qua detaining authority as the arrest memo



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talks about wife Monushree and mother Y.Shyamala as the persons who are informed whereas the detaining authority has proceeded on the basis in the grounds of impugned preventive detention order that the detenu's mother Komala has been informed.

9. The discussion and dispositive reasoning set out supra means that both the points urged by the learned counsel for HCP petitioner are sustained.

10. Ergo, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 18.03.2023 bearing reference No.70/BCDFGISSSV/2023 made by the second respondent is set aside and the detenu Thiru.Iniyavan, aged 33 years, Son of Thiru.Yesuraj, 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.)
11.09.2023

Index : Yes/No
Neutral Citation : Yes/No
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P.S: Registry to forthwith communicate this order to Jail authorities in Central Prison, Puzhal, Chennai.

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To

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- 1.The Secretary to Government,
Prohibition and Excise Department,
Fort St. George, Chennai – 9.
- 2.The Commissioner of Police,
Avadi City.
- 3.The Superintendent of Prison,
Central Prison, Puzhal, Chennai.
- 4.The Inspector of Police,
Anti Land Grabbing Special Cell,
Central Crime Branch,
Avadi City, Chennai.
- 5.The Public Prosecutor,
High Court, Madras.



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

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