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H.C.P.No.731 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.08.2023

Coram

THE HON'BLE MR.JUSTICE **M.SUNDAR**
and
THE HON'BLE MR. JUSTICE **R.SAKTHIVEL**

H.C.P.No.731 of 2023

Choodamani

.. Petitioner

VS

1. The State of Tamil Nadu

Rep. by its Additional Chief Secretary to Government
Prohibition and Excise Department (Home)
Fort St.George
Chennai – 600 009

2. The District Collector and District Magistrate
Nagapattinam District
Nagapattinam

3. The Superintendent of Police
Nagapattinam District
Nagapattinam

4. The Superintendent of Prison
Central Prison, Thiruchirapalli

5. The Inspector of Police
Nagapattinam Town Police Station
(i/c) All Women Police Station
Nagapattinam
Nagapattinam District

.. Respondents



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Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus calling for the records pertaining to the detention order dated 28.03.2023 in C.O.C.No.14/2023 passed by the 2nd respondent and issue direction to produce the body of the detenu namely Parameshwaran, son of Karibeeran, aged 59 years, presently confined at Central Prison, Thiruchirapalli before this Court and set him at liberty.

For Petitioner	:	Mr.S.John Sathyan Senior Counsel for Mr.Swami Subramanian
For Respondents	:	Mr.E.Raj Thilak Additional Public Prosecutor

ORDER

[Order of the Court was made by R.SAKTHIVEL, J.]

This 'Habeas Corpus Petition' ['HCP' for the sake of brevity] has been filed by wife of the detenu assailing a 'preventive detention order dated 28.03.2023 bearing reference C.O.C.No.14/2023' [hereinafter 'impugned preventive detention order' for the sake of brevity and convenience]. To be noted, fifth respondent is the sponsoring authority and second respondent is the detaining authority as impugned preventive detention order has been made by second respondent.



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2. Impugned detention order has been made under '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] on the premise that the detenu is a 'Sexual Offender' within the meaning of Section 2(ggg) of Act 14 of 1982.

3. There is no adverse case. The impugned preventive detention order has been passed based on a solitary case in Crime No.03 of 2023 on the file of Nagapattinam All Women Police Station for alleged offences under Section 8 read with Sections 7 and 9(d) of 'the Protection of Children from Sexual Offences Act, 2012 (No.32 of 2012)' [hereinafter 'POCSO Act' for the sake of convenience and clarity]. Considering the nature of the challenge to the impugned detention order, it is not necessary to delve into the facts of the case.

4. Mr.S.John Sathyan, learned Senior counsel appearing on behalf of counsel on record for petitioner and Mr.E.Raj Thilak, learned State Additional Public Prosecutor for all respondents are before us.



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5.The petitioner filed an affidavit in support of the HCP petition wherein the petitioner raised many grounds against the impugned preventive detention order. But in the final hearing today, learned counsel for petitioner submitted that in the grounds booklet furnished to the detenu remand order has been annexed at page 85, but the same is not readable, which prevented the detenu from making an effective representation and hence, learned counsel prays for setting aside the impugned preventive detention order.

6. The aforementioned point turns heavily on materials placed before us and therefore learned Prosecutor really does not have much of a say.

7. This Court had the benefit of perusing the grounds booklet and this Court is of the view that the aforementioned page which contains remand order of the detenu is not readable. Scanned reproduction of page 85 is as follows:



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WARRANT FOR REMAND

RECEIVED: 1997-07-17

[illegible]

(نقصان) نقصان

Spacy

தமிழக அரசு

தாயகம் ஆய்வகம்.
பிரதமர் அமைச்சர் தலைவர் தலைவர் தலைவர்.

[illegible]

சென்னை, 14.05.2023



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This shows that detaining authority did not apply his mind before passing the impugned preventive detention order. Hence, the right of the detenu to make an effective representation as against the impugned preventive detention order has been impaired. Such a right is enshrined 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 set aside.

8. Resultantly, this HCP is allowed. Impugned detention order dated 28.03.2023 bearing reference C.O.C.No.14/2023 made by the second respondent is set aside and the detenu Thiru.Parameshwaran, son of Thiru.Karibeeran, aged 59 years, 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.)
22.08.2023

Index : Yes

Neutral Citation : Yes

GPA

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



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To

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6. The Public Prosecutor
High Court, Madras.



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

gpa

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