



H.C.P.No.767 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.08.2023

Coram

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

H.C.P.No.767 of 2023

Panneerselvam
S/o.Akilandam

.. Petitioner /Father of detenu

VS

- 1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department
Fort St. George,
Chennai – 600 009.
- 2.The Commissioner of Police / Detaining Authority
Coimbatore City.
- 3.The Superintendent,
Central Prison,
Coimbatore.
4. The Inspector of Police,
D-4 Kuniyamuthur Police Station,
Coimbatore City.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus to call for records relating to the detention order passed by the 2nd respondent pertaining to the order made in



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C.No.17/G/IS/2023 dated 28.02.2023 in detain the detenu under 2(bb) of Tamil Nadu Act 14 of 1982, as a Goonda and quash the same and direct the respondent to produce the detenu P.Govindharaj @ Gopi, son of Panneerselvam aged about 27 years, who is detained at Central Prison, Coimbatore before this Court and set him at liberty.

For Petitioner : Mr.G.Nirmal Krishnan
For Respondents : Mr.E.Raj Thilak,
Additional Public Prosecutor

ORDER

[Order of the Court was made by **M.SUNDAR, J.**]

Captioned 'Habeas Corpus Petition' ['HCP' for the sake of brevity] has been filed by father of detenu assailing a 'preventive detention order dated 28.02.2023 bearing reference C.No.17/G/IS/2023' [hereinafter 'impugned detention order' for the sake of convenience and brevity]. To be noted, fourth respondent is the sponsoring authority and second respondent is the detaining authority as impugned detention order has been made by second respondent.

2. Impugned detention order has been made under 'The Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Cyber law offenders,



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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 'Goonda' within the meaning of Section 2(f) of Act 14 of 1982.

3. There are two adverse cases and one ground case. The ground case which constitutes substantial part of substratum of the impugned preventive detention order is Crime No.43 of 2023 on the file of D-4 Kuniyamuthur Police Station for alleged offences under Sections 392 read with 397 and 506(ii) of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity]. 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.G.Nirmal Krishnan, learned counsel for petitioner and Mr.E.Raj Thilak, learned State Additional Public Prosecutor for all respondents are before us.



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5. Adverting to the grounds booklet supplied to the detenu, learned counsel for petitioner submitted that a bail order in **Surya's** case [to be noted, **Surya's case** bail order has been relied on by the Detaining Authority as a similar case for arriving at subjective satisfaction qua imminent possibility of detenu being enlarged on bail] is furnished at pages 197 to 199 but the lower portion of pages 197 and 198 are not readable at all.

6. We had the benefit of perusing the grounds booklet. We have no reason to disagree with the learned counsel for petitioner. This means that the sacrosanct right vested in detenu for making an effective representation against the impugned preventive detention order has been impaired. To be noted, this right of the detenu to make an effective representation against the impugned preventive detention order is a Constitutional safeguard ingrained in Article 22(5) of Constitution of India. This Court has repeatedly held that infraction of such Constitutional safeguard vitiates impugned preventive detention orders leaving the same liable to be set aside in a habeas drill. This is one such case and therefore, the impugned preventive detention order deserves to be dislodged.



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7. Ergo, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 28.02.2023 bearing reference C.No.17/G/IS/2023 made by the second respondent is set aside and the detenu Thiru.P.Govindharaj @ Gopi, aged 27 years, son of Thiru.Panneerselvam 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.)
07.08.2023

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, Coimbatore.

To

- 1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department
Fort St. George,
Chennai – 600 009.
- 2.The Commissioner of Police / Detaining Authority
Coimbatore City.



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

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3.The Superintendent,
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4. The Inspector of Police,
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5.The Public Prosecutor,
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