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HCP No.776 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.06.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

and

THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

H.C.P.No.776 of 2023

Vijayakumari

W/o.Mayakkannan @ Mayakrishnan

.. Petitioner

Vs.

1. The Secretary to Government
Government of Tamil Nadu (Home)
Prohibition and Excise Department
Fort St.George, Chennai.
2. The District Magistrate and
District Collector
Dharmapuri.
3. The Superintendent
Central Prison, Salem.
4. The Inspector of Police
Kadathur Police Station
Dharmapuri 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 to call for the records relating to the impugned order S.C.No.24/2022 dated 29.11.2022 on the file of the 2nd respondent herein and set aside the same as illegal and direct the respondents to produce the body of the detenu namely, Govindaraj, Son of Mayakannan @ Mayakrishnan, aged about 27 years, now confined at Central Prison, Salem, before this Hon'ble Court and set him at liberty.

For Petitioner	:	Mr.G.Vinodh Kumar
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 mother of the detenu assailing a 'preventive detention order dated 29.11.2022 bearing reference S.C.No.24/2022' [hereinafter 'impugned preventive 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 the impugned preventive detention order has been made by second respondent.



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

3. There is one adverse case and one ground case. The ground case which constitutes substantial part of substratum of the impugned preventive detention order is Crime No.97 of 2022 on the file of Erode Railway Police Station for an alleged offence under Section 174 of 'The Code of Criminal Procedure, 1973 (2 of 1974)' [hereinafter 'Cr.PC' for the sake of brevity and clarity] and subsequently, altered into Sections 302, 301 and 203 of 'Indian Penal Code, 1860 (Act 45 of 1860)' ['IPC' for the sake of brevity]. 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.



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4. Mr.G.Vinodh Kumar, 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.

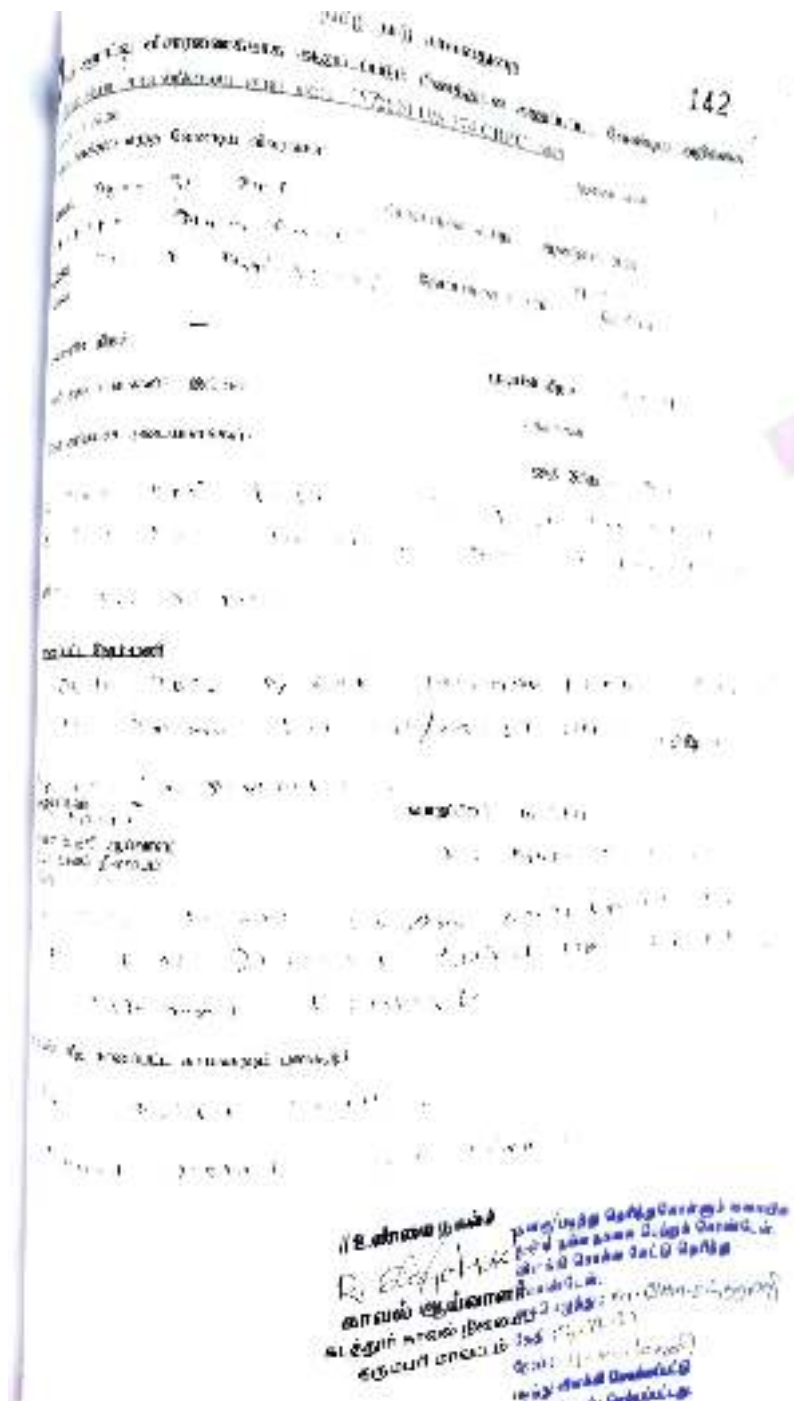
5. In the support affidavit qua captioned HCP, many points have been urged / raised but in the final hearing, learned counsel for petitioner predicated his argument on one point and that one point is Page Nos.142 and 143 of grounds booklet which contain a report sent with a Viscera i.e., பிண ஆராய்வு விசாரணைக்காக அனுப்பப்படும் பிணத்துடன் அனுப்பப்பட வேண்டிய அறிக்கை is completely not readable. A scanned reproduction of Page Nos.142 and 143 are as follows:

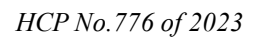


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6. As the aforementioned matter turns heavily on record before us, learned Prosecutor really does not have much of a say.

7. We have no reason to disagree with the learned counsel for petitioner as regards the submission that the aforementioned report is not readable at all. Consequence is, the petitioner's right to make an effective representation has been impaired. To be noted, petitioner's right to make an effective representation qua impugned preventive detention order is a constitutional safeguard ingrained in Clause 5 of Article 22 of Constitution of India. As a sanctus constitutional safeguard has been impaired, we have no difficulty in saying that the impugned preventive detention order deserves to be dislodged.

8. Before concluding, we also remind ourselves that preventive detention is not a punishment and HCP is a high prerogative writ.

9. Apropos, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 29.11.2022 bearing reference S.C.No.24/2022 made by the second respondent is set aside and the detenu



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Thiru.Govindaraj, aged 27 years, son of Thiru.Mayakannan @
Mayakrishnan, 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.)
26.06.2023

Index : Yes
Speaking
Neutral Citation : Yes

mk

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

To

1. The Secretary to Government
Government of Tamil Nadu (Home)
Prohibition and Excise Department
Fort St.George, Chennai.
2. The District Magistrate and
District Collector
Dharmapuri.
3. The Superintendent
Central Prison, Salem.
4. The Inspector of Police
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Dharmapuri District.
5. The Public Prosecutor
High Court, Madras.

M.SUNDAR, J.,
and



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R.SAKTHIVEL, J.,

mk

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