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H.C.P.No.915 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.915 of 2023

Perumal

.. Petitioner

VS

1. Government of Tamil Nadu
Rep. By its Additional Chief Secretary
Home, Prohibition and Excise Department
Secretariat
Chennai – 600 009
2. The District Magistrate and District Collector
Namakkal District
Collectorate
Namakkal
3. The Superintendent of Central Prison
Salem
4. The Superintendent of Police
Namakkal District
5. The Inspector of Police
Nallipalayam Police Station
Namakkal 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 proceedings of the 2nd respondent dated 30.03.2023 passed in C.M.P.No.3/Goonda/2023(M1) against the detenu Dhinesh, son of Perumal, aged about 22 years and to quash the same and consequently direct the respondents to produce the detenu Dhinesh, son of Perumal, who has been now detained as 'Goonda' under Act 14 of 1982 in Central Prison, Salem before this Court and set him at liberty.

For Petitioner : Mr.D.Vairamoorthy
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 the detenu assailing a 'preventive detention order dated 30.03.2023 bearing reference C.M.P.No.03/Goonda/2023(M1)' [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.

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 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.94 of 2023 on the file of Erumapatty Police Station for an alleged offence under Section 302 of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] altered to 302, 120(B) and 201 of IPC. Owing to the nature of the challenge to the impugned detention order, it is not necessary to delve into the factual matrix or be detained further by facts.

4. Mr.D.Vairamoorthy, learned 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 very many grounds have been raised / urged but in the final hearing today, Mr.D.Vairamoorthy, learned counsel for petitioner predicated his campaign against the impugned



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preventive detention order on one point and that one point turns on a critical document which has been relied upon by the Detaining Authority in making the impugned preventive detention order not being furnished to the detenu and this impairs the rights of the detenu qua making an effective representation against the impugned preventive detention order.

6. Elaborating on the aforementioned submission, learned counsel for petitioner drew our attention to a portion of the impugned preventive detention order, which reads as follows:

'....The accused Thiru.Dinesh was produced before the Judicial Magistrate Sendamangalam, on 28.2.2023 and as per his orders, the accused was remanded under judicial custody upto 6.3.2023 in the Central Prison, Salem.....'

Adverting to the aforementioned portion of the grounds of impugned preventive detention order, learned counsel submits that Detaining Authority has relied on an order dated 28.02.2023 said to have been made by Judicial Magistrate, Sendamangalam being a remand order as per which the detenu was remanded to judicial custody upto 06.03.2023 in Central Prison, Salem. Though the Detaining Authority has relied on this document for making the impugned preventive detention order, a copy of the same i.e., a copy of the remand order dated 28.02.2023 has not been furnished to the detenu is



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learned counsel's emphatic say. Learned counsel submits that this has impaired the detenu's sacrosanct right to make an effective representation qua impugned preventive detention order.

7. A copy of grounds booklet furnished to the detenu has been placed before us and we had the benefit of perusing the same. We find that learned counsel for petitioner is correct in his submission that remand order dated 28.02.2023 said to have been made by the jurisdictional Judicial Magistrate has not been furnished to the detenu.

8. As the aforesaid matter turns largely on records before this Court, learned Prosecutor really does not have much of a say.

9. Be that as it may, we find that the document that has been relied on by the Detaining Authority is very critical as it pertains to a remand order i.e., an initial remand order. We also notice that impugned preventive detention order is predicated on ground case and one adverse case (but of the year 2021) or in other words, these two cases together constitute the substratum of the impugned preventive detention order. Therefore, the remand of the detenu in the ground case which constitutes a substantial part



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of the substratum of the impugned preventive detention order is a very important document and it is so critical that non-furnishing of the same certainly hampers the rights of the detenu to make an effective representation qua impugned preventive detention order as contended by learned counsel for HCP petitioner. If the rights of a detenu to make an effective representation is impaired, impugned preventive detention deserves to be dislodged as it gets vitiated. The logic is, the right of a detenu to make an effective representation qua an impugned preventive detention order is a constitutional safeguard which has been ingrained in Clause (5) of Article 22 of Constitution of India and therefore, violation of the same causes vitiation of the impugned preventive detention order leaving it liable for being dislodged in a habeas legal drill.

10. From the narrative thus far, it is clear that the case on hand is one such case where the impugned preventive detention order has been vitiated owing to breach of the aforementioned sacrosanct constitutional safeguard. The narrative thus far also means that the impugned preventive detention order deserves to be dislodged .

11. Ergo, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 30.03.2023 bearing reference C.M.P.No.03/GOONDA/2023 (M1) made by the second respondent is set



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aside and the detenu Thiru.Dhinesh, son of Thiru.Perumal, aged 22 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, Salem.

To

1. The Additional Chief Secretary
Home, Prohibition and Excise Department
Secretariat
Chennai – 600 009
2. The District Magistrate and District Collector
Namakkal District
Collectorate
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High Court, Madras.



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

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