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H.C.P.No.907 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.09.2023

CORAM

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

H.C.P.NO.907 OF 2023

Chandiran

.. Petitioner

VS.

- 1.The Secretary to Government
Home, Prohibition and Excise Department
Secretariat, Fort St. George,
Chennai – 600 009.
- 2.The District Magistrate and District Collector
Erode District,
Erode.
- 3.The Superintendent of Police
Erode District
Erode.
- 4.The Superintendent of Prison
Central Prison – Coimbatore,
Coimbatore District.
- 5.State Rep. By its
The Inspector of Police
Chithode Police Station
Erode District.

.. Respondents



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PRAAYER: Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Habeas Corpus to call for entire records, relating to the petitioner's son detention under Tamil Nadu Act 14 of 1982 vide detention order, dated 10.05.2023 on the file of the second respondent herein made in proceedings Memo Cr.M.P.No.06/Goonda/2023/C1, quash the same as illegal and consequently direct the respondents herein to produce the petitioner's son namely Santhumachan @ Santhosh S/o. Chandiran, aged 39 years before this Court and set the petitioner's son at liberty from detention, now the petitioner's son detained at Central Prison, Coimbatore.

For Petitioner : Mr.D.Balaji
for Mr.W.Camyles Gandhi

For Respondents : Mr.A.Gokulakrishnan
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 10.05.2023 bearing reference Cr.M.P.No.06/Goonda/2023C1' [hereinafter 'impugned preventive detention order' for the sake of convenience and brevity]. 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 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 are three adverse cases. The ground case which constitutes substantial part of substratum of the impugned preventive detention order is Crime No.39 of 2023 on the file of Chithode Police Station for alleged offence registered under Section 399 of 'The Indian Penal Code, 1860 (Act 45 of 1860)' ['IPC' for brevity] and subsequently altered into Sections 399, 420, 465, 468 and 471 of IPC. 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.D.Balaji, learned counsel representing Mr.W.Camyles

Gandhi, learned counsel on record for petitioner and

Mr.A.Gokulakrishnan, learned State Additional Public Prosecutor for all respondents are before us.

5.In the final hearing today, learned counsel placed before us the grounds booklet served on the detenu and drew our attention to page no.350 thereat which is Prisoner's Search Property Register and a scanned reproduction of the same is as follows:



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<https://www.mhc.tn.gov.in/judis>
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6. Adverting to the same, learned counsel submits that the same is not readable at all.

7. We perused the aforementioned page in the grounds booklet and we find no reason to disagree with the learned counsel for petitioner.

8. As the aforementioned point turns on records before us, learned Prosecutor really does not have much of a say.

9. This Court finds that the Prisoner's Search Property Register in the ground case is a very critical document and the same being furnished in a manner which is not readable has certainly impaired the rights of the detenu to make an effective representation against the impugned preventive detention order. Such a right is a very sacrosanct right ingrained in Article 22 (5) of Constitution of India. Impairment of this right vitiates a preventive detention order leaving it liable for being dislodged in a Habeas legal drill. Following this principle, we have no hesitation in saying that the case on hand is one where the impugned preventive detention order deserves to be dislodged.



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10.Ergo, the sequitur is, captioned HCP is allowed.

Impugned preventive detention order dated 10.05.2023 bearing reference Cr.M.P.No.06/Goonda/2023C1 made by the second respondent is set aside and the detenu Thiru. Santhumachan alias Santhosh, male, aged 39 years, Son of Chandiran 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.)

13.09.2023

Index : Yes

Neutral Citation : Yes

Speaking

TK

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



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To

- 1.The Secretary to the Government
Department of Home, Prohibition and Excise
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Erode.
- 3.The Superintendent of Police
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- 5.The Inspector of Police
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Erode District.
- 6.The Public Prosecutor
High Court,
Madras.



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R.SAKTHIVEL, J.

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