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H.C.P.No.919 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.09.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

H.C.P.No.919 of 2023

Gouthami
W/o.Prakash

.. Petitioner/Wife of detenu

Vs.

- 1.State of Tamil Nadu
Rep by its Secretary to Government (Home),
Prohibition and Excise Department
Fort St. George,
Chennai – 600 009.
- 2.The District Magistrate and District Collector,
Namakkal District.
- 3.The Superintendent of Police,
Namakkal District.
- 4.The Superintendent,
Central Prison Salem,
Salem District.
- 5.The Sub Inspector of Police,
Jedarpalayam 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 order or direction in the nature of WRIT OF HABEAS CORPUS, call for the entire records of the 2nd respondent in C.M.P.No.04/GOONDA/2023/(M1) dated 06.04.2023 to quash the same and consequently direct the respondents to produce the petitioner's husband/detenu, Prakash, Son of Natarajan, Male aged 29 years before this Court now confined in Central Prison, Salem and set him at liberty forthwith.

For Petitioner : Mr.K.Prasath
for Mr.M.Mariappan

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 wife of detenu assailing a 'preventive detention order dated 06.04.2023 bearing reference C.M.P.No.04/GOONDA/2023/(M1)' [hereinafter 'impugned preventive detention order' for the sake of convenience and brevity] made by second respondent (hereinafter 'detaining authority' for the sake of convenience). To be noted, fifth respondent is the sponsoring authority.



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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 no adverse case. The ground case which constitutes sole substratum of the impugned preventive detention order is Crime No.22 of 2023 on the file of Jedarpalayam Police Station for alleged offences under Sections 447, 435, 436 and 307 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.K.Prasath, 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.



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5. In the support affidavit qua captioned HCP several grounds have been raised but in the final hearing Mr.K.Prasath, learned counsel for petitioner predicated his argument on one point and that one point turns on non application of mind qua detaining authority in making the impugned preventive detention order.

6. Impugned preventive detention order rests on one solitary case or in other words the entire substratum of the grounds of preventive detention order is constituted by one solitary case in which the detenu was arrested and remanded. The grounds of impugned preventive detention order captures this arrest and remand in the following manner:

'... I am aware that the accused Thiru.Prakash was arrested on 16.03.2023, produced before the Court of Judicial Magistrate, Paramathi, Velur on the same day and lodged at Central Prison, Salem, in connection with the Crime No.22/2023 under Section 447, 435, 436 and 307 Indian Penal Code registered in Jedarpalayam Police Station, and his remand has been extended upto 30.03.2023. ...'

7. Adverting to the above portion of the grounds of impugned preventive detention order, learned counsel for petitioner submitted that on 30.03.2023, the detenu was not produced before the learned 'Judicial



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Magistrate, Paramathi' [hereinafter 'jurisdictional JM' for the sake of convenience] but the impugned preventive detention order has been made one week later on 06.04.2023.

8. Learned counsel also drew our attention to the remand order and remand extension orders furnished to the detenu and submitted that on 30.03.2023, the detenu was not produced before jurisdictional JM and therefore, there is non application of mind on the part of the detaining authority.

9. In response to the above argument learned Additional Public Prosecutor submitted that a perusal of the remand extension orders will show that though the detenu was not produced before jurisdictional JM on 30.03.2023, he was produced subsequently on 05.04.2023 and the remand was extended till 19.04.2023.

10. We considered the rival submissions and we had the benefit of perusing the grounds booklet served on the detenu. Scanned reproduction of remand order and remand extension orders are as follows:



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அடைப்புகள் காவலில் வைப்பதற்கான உத்தரவு
பிரிவு 167 ரூ.வீ முச.

தேதி
கண்காணிப்பாளர்,
மத்திய சிறை,
சேலம்.

பிரகாஷ் (29) த/பெ.நடராஜன், 9/27, வி.கார்ப்பாளையம், ஜே.பா.பாளையம், ப.வேலூர்
பட்டம், நாமக்கல் மாவட்டம் எஸ்.பி. மீது பிரிவு 447, 435, 436 உ./இ 307 இடது கரையில் உள்ளதால் குடி விசாரணை முறை
சட்டம் சேப்ட-14-ல் வழங்கப்பட்டுள்ள வழிமுறைகளின் பேரில் பிரிவு 61 ஸ்டு 24 மணி
தர மீது கொடுக்கப்பட்ட தகவலானது நம்புபடியான காரணம் நன்கு தெரிய வருவதால்
இந்தியாவின் தீவிர கொண்டு வரப்பட்டுள்ள, இதனால் மேலே சொல்லப்பட்ட பிரகாஷ்
மார்ச்சு 14 தினங்களுக்கு அடைப்புக் காவலில் வைக்க நன்கு தெரிய வருவதால்
வழங்கப்படுகிறது மற்றும் திண்டுக்கல் நீதித்துறை நடுவர் எண்.1 நீதிமன்றம் மூலமாக 30.03.2023-
ம் தேதி காலை 10.00 மணிக்கு தவறாது ஆஜர் செய்யப்பட வேண்டும்.

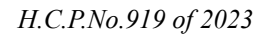
கைதியின் விவரங்கள்

1. எதிர்பின் பெயர்	: பிரகாஷ்
2. தகப்பனார் பெயர்	: நடராஜன்
3. பாலினம், திருமணமானவரா/ஆகாதவரா	: ஆண், மணமானவர்
4. இனம், மதம், சாதி	: இந்து வேட்டுவ கவுண்டர்
5. தொழில்	: டிரைவர்
6. வயது	: 29
7. அங்கம்ச அடையாளங்கள்	: 1) இடது மார்பில் ஒரு கறுப்பு மச்சம். 2) இடது முதுகில் ஒரு கறுப்பு மச்சம்.

16.03.2023-ம் தேதி நீதிமன்ற முத்திரை இடப்பட்டு எண்ணல் வழங்கப்பட்டது.

ஒப்பம் : _____ 16.03.2023
நீதித்துறை நடுவர்,
பரமத்தி.

/உண்மை நகல்/
Inspector of Police
Paramathi Circle
Namakkal District.



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WEB COPY 11. From the above remand and remand extension orders which was before detaining authority, who made the impugned preventive detention order, it is clear that the detaining authority had material given by the sponsoring authority which says that there was no remand extension after 30.03.2023. This has neither been captured nor mentioned in the impugned preventive detention order. This assumes greater significance, as already alluded to supra the impugned preventive detention order rests on one solitary case. Therefore, considering the facts and circumstances of the case we are of the view that the detaining authority, i.e., second respondent jurisdictional District Collector in her capacity as District Magistrate has made the impugned preventive detention order in a mechanical manner. This means that impugned preventive detention order is vitiated by non application of mind qua detaining authority. This further means that the impugned preventive detention order deserves to be dislodged in a habeas legal drill.

12. Ergo, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 06.04.2023 bearing reference



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C.M.P.No.04/GOONDA/2023/(M1) made by the second respondent is set aside and the detenu Thiru.Prakash, aged 29 years, Son of Thiru.Natarajan, 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.)

11.09.2023

Index : Yes /No

Neutral Citation : Yes /No

Speaking order/ Non-speaking order
rsi

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



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

rsi

To

- 1.The Secretary to Government (Home),
Prohibition and Excise Department
Fort St. George,
Chennai – 600 009.
- 2.The District Magistrate and District Collector,
Namakkal District.
- 3.The Superintendent of Police,
Namakkal District.
- 4.The Superintendent,
Central Prison Salem,
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- 5.The Sub Inspector of Police,
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- 6.The Public Prosecutor
High Court, Madras.

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