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H.C.P.No.930 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.07.2023

Coram

THE HON'BLE MR.JUSTICE **M.SUNDAR**
and
THE HON'BLE MR. JUSTICE **R.SAKTHIVEL**

H.C.P.No.930 of 2023

Tmt.Jansi Rani

.. Petitioner/
Sister of detenu

vs

1. The Additional Chief Secretary to Government
Home, Prohibition and Excise Department
Secretariat, Chennai – 600 009

2.The Commissioner of Police, Tambaram City
Office of the Commissioner of Police (Goondas Section)
Tambaram

3. The Inspector of Police
T-16, Chemmanchery Police Station
Chennai District

4. The Superintendent of Police
Central Prison, Puzhal, Chennai

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus to call for the records in connection with the order of detention passed by the second respondent dated 16.12.2022 in B.C.D.F.G.I.S.S.S.V No.213 of 2022 against the petitioner's brother Udhai @



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Udhayasekar, son of Venkatesan aged about 30 years, who is confined at Central Prison, Puzhal, Chennai and set aside the same and direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner : Mr.T.Balaji

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 the sister of the detenu assailing a 'preventive detention order dated 16.12.2022 bearing reference 213/BCDFGISSSV/2022' [hereinafter 'impugned preventive detention order' for the sake of convenience and brevity]. To be noted, third 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, 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



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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 and one ground case. The ground case which constitutes substantial part of substratum of the impugned preventive detention order is Crime No.291 of 2022 on the file of T-16, Chemmanchery Police Station for alleged offences under Sections 341, 294(b), 323, 392 read with 397, 336, 427 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 detention order, it is not necessary to delve into the factual matrix or be detained further by facts.

4. Mr.T.Balaji, 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. Mr.T.Balaji, learned counsel submitted that copy of similar case bail order referred to in the grounds of detention, which was furnished to the detenu in the grounds booklet at page 169 is not readable. In this regard, learned counsel for petitioner drew our attention to a portion of paragraph No.4 of grounds booklet which reads as follows:

'4.Further it is pertinent to note that in a case



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registered at R.6 Kumaran Nagar Police Station Crime No.527/2021, u/s.341, 294(b), 336, 324, 392, 427, 397 and 506(ii) IPC under similar section of law of the ground case, bail was granted to the accused Ashok by the Court of Learned Principle and District Sessions Court, Chennai, in Crl.M.P.No.19198/2021. Hence, I infer that there is a likely of his coming out on bail in T-16, Chemmanchery Police Station Crime No.286/2022 and 291/2022 since in similar placed cases,bail was granted by the Courts after a lapse of time.'

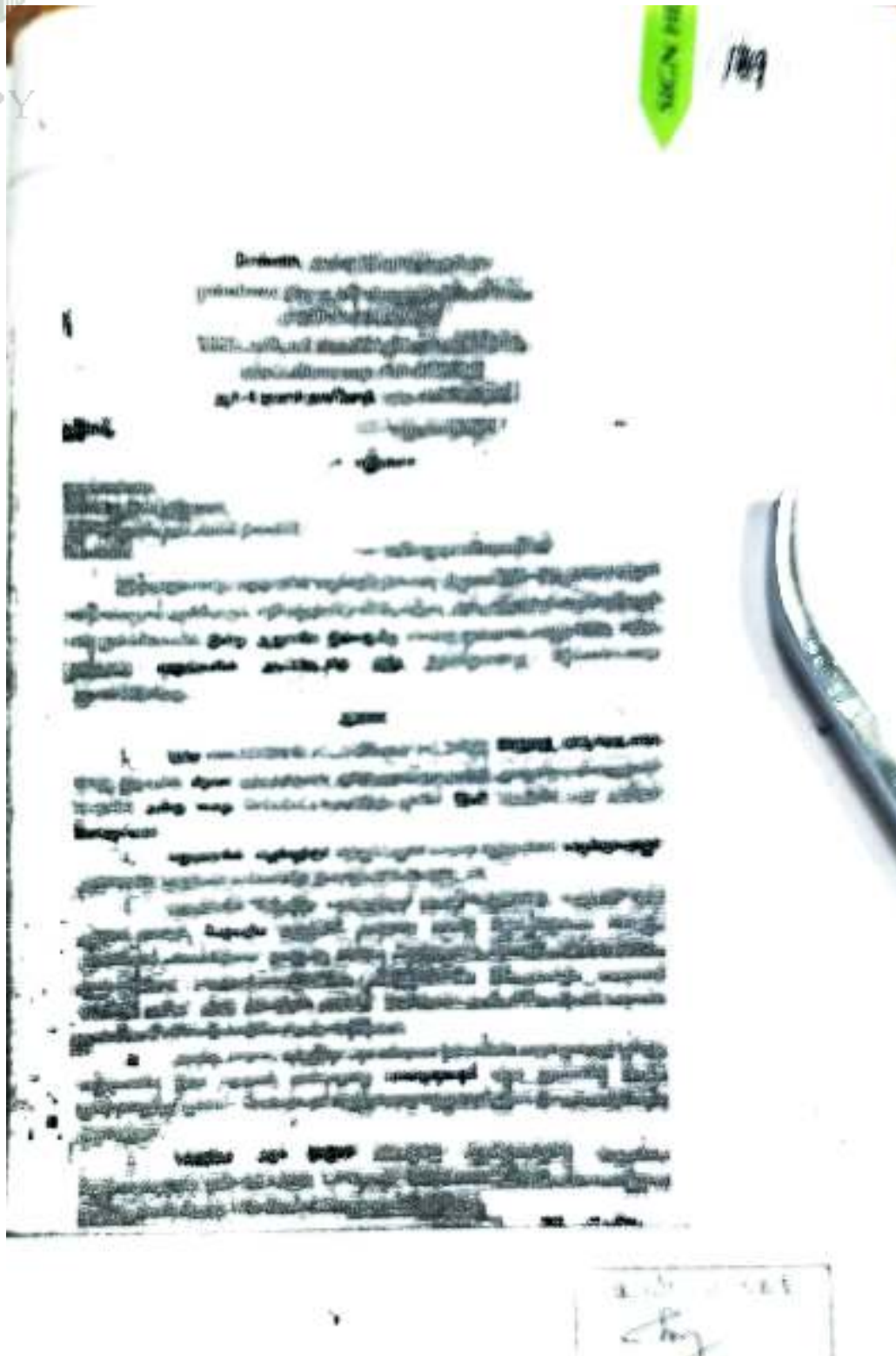
6. The aforementioned point turns heavily on records and therefore learned Prosecutor really does not have much of a say.

7. This Court had the benefit of perusing the grounds booklet and this Court is of the view that the aforementioned similar case bail order which is at page Nos.169 is not readable. A scanned reproduction of the same is as follows:



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This means that right of the detenu to make an effective representation as against the impugned preventive detention order has been impaired. Such a right is sanctus constitutional right ingrained in Article 22(5) of the Constitution of India. This constitutional right of the detenu has been subjected to infraction. This has vitiated the impugned preventive detention order. Therefore, the impugned preventive detention order is liable to be dislodged.

8 Apropos, the sequitur is, captioned HCP is allowed. Impugned detention order dated 16.12.2022 bearing reference 213/BCDFGISSSV/2022 made by the second respondent is set aside and the detenu Thiru.V.Udhai @ Udhayasekar, S/o.Thiru.Venkatesan, aged about 30 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.)
31.07.2023

Index : Yes

Neutral Citation : Yes

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



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To

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

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