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H.C.P.No.973 of 2023

-IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.08.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

H.C.P.No.973 of 2023

Yuvarani

D/o.Meganathan

.. Petitioner /
Sister of the detenu

Vs.

1. The Secretary to Government
Home, Prohibition and Excise Department
Fort St.George
Chennai-600 009.

2. The Commissioner of Police
Greater Chennai

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

4. The Inspector of Police (crime)
H-6, R.K.Nagar Police Station
Chennai

..Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ order or direction to call for the records in connection with the order of detention passed by the second respondent dated

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07.02.2023 in No.36/BCDFGISSSV/2023 against the petitioner brother Dinesh @ Kava Dinesh, male, aged about 22 years, son of Meganathan, who is confined at Central Prison, Puzhal, Chennai, set aside the same and direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner : Mr.S.Senthilvel
for Mr.M.Illiyas

For Respondents : Mr.E.Raj Thilak
Additional Public Prosecutor

ORDER

[Order of the Court was made by M.SUNDAR, J.,]

When the captioned 'Habeas Corpus Petition' [hereinafter 'HCP' for the sake of convenience and clarity] was listed for admission on 09.06.2023 this Court made the following order:

'H.C.P.No.973 of 2023

M.SUNDAR, J.,

and

K.GOVINDARAJAN THILAKAVADI, J.,

[Order of the Court was made by M.SUNDAR. JJ]

Captioned Habeas Corpus Petition has been filed in this Court on 02.06.2023 inter alia assailing a detention order dated 07.02.2023 bearing reference 36/BCDFGISSSV/2023 made by 'second respondent' [hereinafter 'Detaining Authority' for the sake of



convenience and clarity]. To be noted, fourth respondent is the Sponsoring Authority.

2. To be noted, sister of the detenu is the petitioner.

3. Mr.M.Illiyas, learned counsel on record for habeas corpus petitioner is before us. Learned counsel for petitioner submits that ground case qua the detenu is for alleged offences under Sections 341, 294(b), 323, 427, 336, 392, 397 and 506(ii) of 'Indian Penal Code, 1860 (Act 45 of 1860)' ['IPC' for brevity] in Crime No.20 of 2023 on the file of H6 R.K.Nagar Police Station.

4. The aforementioned detention order has been made on the premise that the detenu is a 'Goonda' under Section 2(f) of '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].

5. The detention order has been assailed inter alia on the ground that the remand extension order in the grounds booklet furnished to the detenu has not been properly translated which prevented the detenu from making an effective representation.

6. Prima facie case made out for admission. Admit. Issue Rule nisi returnable by four weeks.

7. Mr.R.Muniyapparaj, learned Additional Public Prosecutor, State of Tamil Nadu accepts notice for all respondents. List the captioned Habeas Corpus Petition accordingly.'



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2. The aforementioned Admission Board order dated 09.06.2023 captures all essentials that are imperative for appreciating this order and therefore, we are not setting out the same again in this order. However, short forms, short references and abbreviations used in the Admission Board order will continue to be used in the instant order also for the sake of brevity, convenience and clarity.

3. Mr.S.Senthilvel, 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.

4. A perusal of paragraph 5 of the aforementioned Admission Board order makes it clear that at the time of admission, learned counsel posited his challenge to the impugned preventive detention order on the point that remand extension order in the grounds booklet furnished to the detenu has not been properly translated, however today in the final hearing Board Mr.S.Senthilvel, learned counsel representing the counsel on record for the petitioner predicated his campaign against the impugned preventive detention order on the point that subjective satisfaction arrived at by the Detaining Authority qua imminent possibility of detenu being enlarged on



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bail is impaired. Elaborating his submission in this direction, learned counsel drew our attention to a portion of paragraph 4 of grounds of impugned preventive detention order, which reads as follows:

'4..... The sponsoring authority has stated that he came understand that the relatives of Thiru.Dinesh @ Kava Dinesh are taking steps to take him out on bail by filing bail applications in H6 R.K.Nagar Police Station Cr.No.19/2023 and 20/2023 before the appropriate Court.....'

5. Adverting to the aforementioned portion of the impugned preventive detention order learned counsel submitted that Sponsoring Authority has informed the Detaining Authority that relatives of the detenu are taking steps to move bail. *Inter alia* on this basis, Detaining Authority has arrived at subjective satisfaction that there is imminent possibility of detenu being enlarged on bail. In this regard, this Court reminds itself that imminent possibility is qua probability and not qua time.

6. Be that as it may, adverting to the grounds booklet and more particularly, pages 175 and 176 thereat, learned counsel submitted that statement from the mother of the detenu under Section 161(3) of 'The Code of Criminal Procedure, 1973 (2 of 1974)' [hereinafter 'Cr.P.C' for the sake of brevity and clarity] as well as Special Report from the Sponsoring

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Authority i.e., Respondent No.4 do not contain a date.

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7. Learned Prosecutor submitted to the contrary and submitted that date not being mentioned does not take away the merits of the contents of 161(3) Cr.P.C statement and/or the special report.

8. We carefully considered the submissions made on both sides. We find that the date not being mentioned in Section 161(3) Cr.P.C statement as well as the special report certainly casts a cloud on the contents but it is not necessary to go that far. The reason is, absent date, the lurking doubt as to whether 161(3) Cr.P.C statement and the special report are prior to the impugned preventive detention order or post impugned preventive detention order arises as impugned preventive detention order was served on the detenu on 08.02.2023 and grounds booklet was served on the detenu on 12.02.2023. In such cases, the benefit of doubt has to necessarily be given to the detenu. Therefore, on this simple first principle, without even going into the credibility of the contents, the absence of date and the resultant doubt i.e., benefit of doubt certainly enures to the benefit of the detenu. This means that the subjective satisfaction arrived at by the Detaining Authority qua imminent possibility of detenu being enlarged on



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bail is clearly flawed and if the subjective satisfaction is flawed, the impugned preventive detention order gets vitiated and becomes liable for being dislodged in a Habeas legal drill.

9. Ergo, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 07.02.2023 bearing reference No.36/BCDFGISSSV/2023 made by the second respondent is set aside and the detenu Thiru.Dinesh @ Kava Dinesh, male, aged 22 years, son of Thiru.Meganathan, 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.)

16.08.2023

Index : Yes

Speaking order

Neutral Citation : Yes

gpa

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



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To

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2. The Commissioner of Police
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High Court, Madras.



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and
R.SAKTHIVEL, J.,

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