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H.C.P.No.1001 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.09.2023

Coram

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

H.C.P.No.1001 of 2023

Selvi

W/o.Mani

.. Petitioner /Mother of Detenu

VS

1.The State rep. by
The Secretary to Government of Tamil Nadu,
Home, Prohibition and Excise Department,
Fort St. George, Chennai – 600 009.

2.The Commissioner of Police,
Coimbatore City Police,
Coimbatore – 18.

3. The Superintendent of Prison,
Central Prison,
Coimbatore.

4. The Inspector of Police,
E-2 Peelamedu Police Station,
Coimbatore.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus directing the respondents to produce the detenu Thiru.Jayaraj @ Thotti Jaya, Male aged 25 years, Son



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of Mani, residing at 6/18 Muthumariammankoil back side, Vilankurichi Road, Thanneerpandal, Coimbatore-4, now confined at Central Prison, Coimbatore as per the order of the preventive detention passed by the second respondent under Act 14 of 1982 before this Court and call for the records pertaining to the detention order of the second respondent in C.No.38/G/IS/2023 dated 04.04.2023 and quash the same and set the detenu at liberty.

For Petitioner : Mr.P.Nagaraju

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 before this Court in the Admission Board on 15.06.2023, this Court made the following order:



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

(Order of the Court was made by M.SUNDAR, J.,)

Captioned Habeas Corpus Petition has been filed in this Court on 08.06.2023 *inter alia* assailing a detention order dated 04.04.2023 bearing reference C.No.38/G/IS/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, mother of the detenu is the petitioner.

3. Mr.P.Nagaraju, 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 147, 148, 294(b), 307, 323, 341, 506(ii) and 109 of 'Indian Penal Code, 1860 (Act 45 of 1860)' ['IPC' for brevity] in Crime No.133 of 2023 on the file of E-2 Peelamedu 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,



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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].

5. The detention order has been assailed *inter alia* on the ground that the subjective satisfaction arrived at by the Detaining Authority that there is imminent possibility of the detenu being enlarged on bail is not proper as the bail petition filed by the detenu was dismissed.

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

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

[M.S.J.,]

[R.S.V.J.,]

15.06.2023

mk



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2. The aforementioned 15.06.2023 Admission Board order captures all essentials, i.e., all facts that are imperative for appreciating the final order and therefore, we are not setting out the facts again in this final order. Suffice to say that aforementioned Admission Board order shall be read as an integral part and parcel of this final order. Be that as it may, we are using the short forms, short references and abbreviations used in the Admission Board order in this order also for the sake of convenience and clarity.

3. To be noted, 'detention order dated 04.04.2023 bearing reference C.No.38/G/IS/2023 made by the Detaining Authority' shall hereinafter be referred to as 'impugned preventive detention order' in this order for the sake of brevity, convenience and clarity.

4. Mr.P.Nagaraju, learned counsel on record for petitioner and Mr.E.Raj Thilak, learned State Additional Public Prosecutor for all respondents are before us.

5. Learned counsel for petitioner, in the admission board projected the argument that the subjective satisfaction arrived at by the detaining

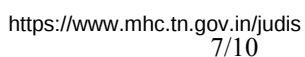
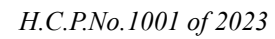


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authority qua imminent possibility of detenu being enlarged on bail is not proper but in the final hearing board, learned counsel predicated his campaign against impugned preventive detention order on one point and that one point turns on supply of illegible copies in the grounds booklet. Elaborating on the submission, learned counsel submitted that in page 45 of the grounds booklet, the Arrest Memo was not readable, which prevented the detenu from making an effective representation.

6. The aforementioned point turns heavily on records and therefore learned Additional Public 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 page which contains the Arrest Memo is not readable. Scanned reproduction of page 45 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. Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 04.04.2023 bearing reference C.No.38/G/IS/2023 made by the second respondent is set aside and the detenu Thiru.M.Jayaraj @ Thotti Jaya, aged 25 years, son of Thiru.Mani, 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.)
14.09.2023

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, Coimbatore.



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To

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Home, Prohibition and Excise Department,
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2. The Commissioner of Police,
Coimbatore City Police,
Coimbatore – 18.
3. The Superintendent of Prison,
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E-2 Peelamedu Police Station,
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5. The Public Prosecutor,
High Court, Madras.



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

rsi

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