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H.C.P.No.1151 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.09.2023

CORAM

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

H.C.P.NO.1151 OF 2023

Mrs.Lilly

.. Petitioner

VS.

1.Secretary to the Government

Department of Home, Prohibition and Excise
Secretariat, Fort St. George,
Chennai – 600 009.

2.Commissioner of Police

Office of the Commissioner of Police
Avadi,
Chennai – 600 054.

3.The Superintendent

Special Prison for Women
Puzhal,
Chennai – 600 066.

4.The Inspector of Police

M-7, Manali New Town Police Station
(Law and Order)
Chennai – 600 054.

.. Respondents



H.C.P.No.1151 of 2023

PRAYER: Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Habeas Corpus to call for the record in connection with the detention passed by the second respondent dated 22.03.2023 in Memo No.75/BCDFGISSSV/2023 against the petitioners detinue Suganya Female aged 32 years W/o. Elangovan who is confined at Special Prison for Women, Puzhal, Chennai and set aside the same and direct the respondents to produce the detinue before this Court and set her at liberty.

For Petitioner : Mr.Mohammed Feroz

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 in the Admission Board on 10.07.2023, this Court made the following order:

'H.C.P.NO.1151 OF 2023

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 19.06.2023 inter alia assailing a 'detention order dated 22.03.2023 bearing reference No.75/BCDFGISSSV/2023' [hereinafter 'impugned preventive detention order' for the sake of convenience and clarity] 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 detenu is the petitioner.

3. Mr.Prem Kumar, learned counsel on record for petitioner is before us. Learned counsel for petitioner submits that ground case qua the detenu is for alleged offences under Section 8(c) read with 20(b)(ii)(B) of 'Narcotic Drugs and Psychotropic Substances Act, 1985' [hereinafter 'NDPS Act' for the sake of convenience and clarity] in Crime No.45 of 2023 on the file of M-7 Manali New Town Police Station.

4. The aforementioned impugned preventive detention order has been made on the premise that the detenu is a 'Drug Offender' under Section 2(e) 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 impugned preventive detention order has been assailed inter alia on the ground that the detenu has no previous cases and she has no antecedents.

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



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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.'

2.The aforementioned order made in the 10.07.2023 Admission listing shall be read as an integral part and parcel of this order which means that the short forms, short references and abbreviations used in the order in the Admission listing shall be used in the instant order also.

3.There is no adverse case. This solitary case which is the sole substratum of the impugned preventive detention order is Crime No.45 of 2023 on the file of M-7 Manali New Town Police Station for the alleged offences under Sections 8(c) read with 20(b)(ii)(B) of NDPS Act. 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.Mohammed Feroz, learned 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.As would be evident from paragraph 5 of the Admission Board order dated 10.07.2023 at the time of admission, the point that the detenu has no previous cases and she has no antecedents was raised but in the final hearing Board today, learned counsel placed before us the grounds booklet served on the detenu and drew our attention to page no.51 thereat which is a similar case bail order i.e., similar case bail order in the ground case and a scanned reproduction of the same is as follows:





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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 similar case bail order 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 22.03.2023 bearing reference No.75/BCDFGISSSV/2023 made by the second respondent is set aside and the detenue Tmt.Suganya, Female, aged 32 years, W/o. Ilangovan 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.)

12.09.2023

Index : Yes

Neutral Citation : Yes

Speaking

TK

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



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To

1. Secretary to the Government
Department of Home, Prohibition and Excise
Secretariat, Fort St. George,
Chennai – 600 009.
2. Commissioner of Police
Office of the Commissioner of Police
Avadi,
Chennai – 600 054.
3. The Superintendent
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5. The Public Prosecutor
High Court,
Madras.



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