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HCP No.1048 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.1048 of 2023

Mrs.Revathi

.. Petitioner
Wife of the detenu

Vs.

1. State of Tamil Nadu
Rep. by its Additional Chief Secretary to Government
Home, Prohibition and Excise Department
Fort St.George, Chennai-600 009.
2. The Commissioner of Police
The Greater Chennai City
Vepery, Chennai – 600 007
3. The Superintendent of Prison
Central Prison, Puzhal
Chennai-600 066.
4. The Inspector of Police
K3, Aminjikarai Police Station
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 relating to the detention order in Memo No.77/BCDFGISSSV/2023 dated 29.03.2023



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passed by the 2nd respondent under Tamilnadu Act 14 of 1982 and set aside the same and direct the respondents to produce the petitioner's husband Oorugai bottle @ Vikki @ Vignesh, son of Rajendran, aged about 29 years, the detenu now confined in Central Prison, Puzhal, Chennai before this Court and set him at liberty.

For Petitioner : Mr.M.Sathish Kumar
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 the detenu assailing a 'preventive detention order dated 29.03.2023 bearing reference No.77/BCDFGISSSV/2023' [hereinafter 'impugned preventive detention order' for the sake of brevity and convenience]. To be noted, fourth 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-



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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 are five adverse cases and one ground case. The ground case which constitutes substantial part of substratum of the impugned preventive detention order is Crime No.72 of 2023 on the file of K-3 Aminjikarai Police Station for alleged offence 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] altered to 341, 294(b), 394, 392 read with 397, 336, 427 and 506(ii) of IPC and Section 25(1-A) of Arms Act, 1959. 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.M.Sathish Kumar, 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. In the support affidavit qua captioned HCP, many grounds have been urged but in the final hearing board today, Mr.M.Sathish Kumar, learned counsel on record for HCP petitioner predicated his argument on one point and that one point turns on rights of the detenu to make an effective representation against the impugned preventive detention order being impaired. Elaborating his submission in this direction, learned counsel drew our attention to a portion of paragraph 4 of the grounds of impugned preventive detention order, which reads as follows:

'4. I am aware that Thiru.Oorugai Bottle @ Vikki @ Vignesh is in remand in K-3 Aminjikarai Police Station Crime No.72/2023 and he has not moved any bail application for K-3 Aminjikarai Police Station Crime No.72/2023 so far.....'

6. Learned counsel thereafter placed before us the grounds booklet [booklet containing the documents which form the basis for the grounds of impugned preventive detention order] and drew our attention to page 177 thereat [கைது குறிப்பாணை] qua aforementioned ground case.

7. Adverting to கைது குறிப்பாணை, learned counsel submitted that Column No.4 pertaining to details of offences is blank and there is overwriting with regard to crime number also. Learned counsel submitted that this has impaired the right of the detenu to make an effective



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representation qua impugned preventive detention order.

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8. In response to the aforementioned argument, learned Prosecutor submitted that the above is an inadvertent clerical/secretarial error.

9. We carefully considered the rival submissions. We find that கைது குறிப்பாணை in the ground case is a very important document and there is overwriting with regard to the crime number itself and the alleged offences column [Serial No.4] has been left blank. This certainly impairs the rights of the detenu to make an effective representation as there is no trial in a HCP drill. We remind ourselves that preventive detention is not a punishment and HCP is a high prerogative writ. In this view of the matter, we have no difficulty in saying that in the facts and circumstances of the case on hand, we have no hesitation to sustain the arguments of the learned counsel for petitioner that the rights of the detenu to make an effective representation qua impugned preventive detention order has been impaired. This means that there is breach of sacrosanct constitutional safeguard ingrained in Article 22(5) of the Constitution. This Court has repeatedly held that breach of safeguard ingrained in Article 22(5) of the Constitution vitiates a preventive detention order and leaves it vulnerable for being dislodged in habeas legal drill. This is one such case and therefore, the impugned preventive detention



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order deserves to be set aside.

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10. Apropos, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 29.03.2023 bearing reference No.77/BCDFGISSSV/2023 made by the second respondent is set aside and the detenu Thiru.Oorugai bottle @ Vikki @ Vignesh, son of Rajendran, aged about 29 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.)
11.09.2023

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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1. The Additional Chief Secretary to Government
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2. The Commissioner of Police
The Greater Chennai City
Vepery, Chennai – 600 007
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5. The Public Prosecutor
High Court, Madras.



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

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