



H.C.P.No.1059 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.08.2023

CORAM

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

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.. Petitioner

Vs

1.The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Fort St. George, Chennai – 9.

2.The Commissioner of Police,
O/o. Commissioner of Police,
Avadi City, Chennai.

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

4.The Inspector of Police,
M-5, Ennore Police Station,
Chennai District.

.. Respondents

Petition filed under Article 226 of the Constitution of India
praying for issuance of a writ of habeas corpus to call for the entire
records connected with the detention order in
No.207/BCDFGISSSV/2022 dated 31.12.2022 on the file of the second
respondent and quash the same and direct the respondents to produce

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the body and person of petitioner's friend one Srinivasan, S/o.Loganathan, aged about 43 years, now confined at Central Prison, Puzhal, Chennai, before this Court and set him at liberty forthwith.

For Petitioner : Mr.P.Muthamizh Selvakumar
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 friend of the detenu assailing a 'preventive detention order dated 31.12.2022 bearing reference No.207/BCDFGISSSV/2022' [hereinafter 'impugned preventive detention order' for the sake of convenience and brevity] made by second respondent (hereinafter 'detaining authority' for the sake of convenience). To be noted, fourth respondent is the sponsoring authority.

2. Impugned preventive detention order has been made under 'The Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Cyber law offenders, Drug-offenders, Forest-offenders, Goondas,



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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] on the premise that the detenu is a 'Goonda' within the meaning of Section 2(f) of Act 14 of 1982.

3. There is no adverse case. The ground case which is the sole substratum of the impugned preventive detention order is Crime No.729 of 2022 on the file of M-5 Ennore Police Station under Section 174 of 'The Code of Criminal Procedure, 1973 (2 of 1974)' [hereinafter 'Cr.P.C.' for the sake of brevity and clarity] **subsequently altered into one under** Section 302 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 preventive detention order, it is not necessary to delve into the factual matrix or be detained further by facts.

4. Mr.P.Muthamizh Selvakumar, 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. Learned counsel drew our attention to a portion of paragraph 3 of the impugned preventive detention order which reads as follows:

'3. I am aware that Thiru.Srinivasan is in remand in M-5 Ennore Police Station Cr.No.729/2022 and lodged at Central Prison, Puzhal, Chennai. He has not moved any bail application for M-5 Ennore Police Station Cr.No.729/2022. The sponsoring authority has stated that it is learnt that the relatives of Thiru.Srinivasan are taking action to take him on bail in M-5 Ennore Police Station Cr.No.729/2022 by filing bail application before the appropriate court. Hence, I infer that there is real possibility of his coming out on bail in M5 Ennore Police Station Cr.No.729/2022 by filing bail application before the appropriate court...'

6. Adverting to the aforementioned portion of the impugned preventive detention order, learned counsel submitted that the detaining authority has relied on statement of detenu's relative as well as special report from the sponsoring authority for arriving at subjective satisfaction qua imminent possibility of detenu being enlarged on bail. These two documents have been furnished to the

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detenu at pages 57 and 58 of the grounds booklet and a perusal of the same reveals that the same do not contain a date. Learned counsel points out that both these documents are undated and submits that subjective satisfaction arrived at by the detaining authority is impaired.

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

8. Be that as it may, this Bench considered the argument and finds that though the relative's statement and status report have been furnished in the grounds booklet, as the same do not contain date it is not clear as to whether the same were prior to the date of impugned preventive detention order or after the impugned preventive detention order. In such cases, the benefit of doubt has to be given to the detenu. If the benefit of doubt is given to the detenu and if it is viewed in the light of the indisputable position that the special report of the sponsoring authority is a self-serving document, we have no hesitation in saying that subjective satisfaction arrived at by the detaining authority is impaired. This means that impugned preventive detention order deserves to be dislodged.



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9. Ergo, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 31.12.2022 bearing reference No.207/BCDFGISSSV/2022 made by the second respondent is set aside and the detenu Thiru.Srinivasan, aged 43 years, Son of Thiru.Loganathan, 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.)
14.08.2023

Index : Yes/No

Neutral Citation : Yes/No

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

To

- 1.The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Fort St. George, Chennai – 9.
- 2.The Commissioner of Police,
O/o. Commissioner of Police, Avadi City, Chennai.
- 3.The Superintendent of Prison,
Central Prison, Puzhal, Chennai.
- 4.The Inspector of Police,
M-5, Ennore Police Station, Chennai District.
- 5.The Public Prosecutor,
High Court, Madras.

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and
R.SAKTHIVEL, J.,**

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