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H.C.P.No.1127 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.1127 of 2023

Mr.Yesudoss @ Sathish

.. Petitioner

Vs

1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise (XVI) Department,
Fort St.George, Secretariat, Chennai – 600 009.

2.The Commissioner of Police,
Office of the Commissioner of Police,
Greater Chennai

3.The Superintendent of Police
Central Prison at Puzhal

4.The Inspector of Police,
Anti-Vice Squad II
Greater Chennai Police

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus calling for the records in Detention order in No.181/BCDFGISSSV/2023 dated 22.05.2023 on the file of the 2nd respondent and set aside the same and direct the respondents herein to

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produce the body of the petitioner / detenu Yesudoss @ Sathish, son of Ambrose, aged 26 years, now confined under 3rd respondent herein before this Court and set him at liberty.

For Petitioner : Ms.R.Subadra Devi
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 30.06.2023, this Court made the following order:

' H.C.P.No.1127 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 22.05.2023 bearing reference No.181/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.



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2. To be noted, detenu is the petitioner.

3. Ms.R.Subadra Devi, 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 3(2)(a), 4(1) and 5(1)(a) of 'Immoral Traffic (Prevention) Act, 1956' [hereinafter 'ITP Act' for the sake of convenience and clarity] in Crime No.18 of 2023 on the file of Chennai Anti Vice Squad – II.

4. The aforementioned detention order has been made on the premise that the detenu is a 'Immoral Traffic Offender' under Section 2(g) 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 grounds that the remand order has not been properly translated and the similar case bail order relied on by the detaining authority has not been enclosed in the booklet furnished to the detenu.

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



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captioned Habeas Corpus Petition accordingly.'

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2. The aforementioned Admission Board order captures essentials that are imperative for appreciating this order and therefore, we are not setting out the same again. 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. Ms.R.Subadra Devi, learned counsel on record for petitioner and Mr.E.Raj Thilak, learned State Additional Public Prosecutor for all respondents are before us.

4. As would be evident from paragraph 5 of the Admission Board order, at the time of admission, the points that the remand order has not been properly translated and the similar case bail order relied on by the Detaining Authority has not been enclosed in the booklet furnished to the detenu were raised /urged but in the final hearing board, learned counsel submitted that the Detaining Authority has relied on what the Sponsoring Authority has stated with regard to steps being taken by the relatives of the detenu for taking him out on bail but special report of the Sponsoring Authority is undated. Elaborating his argument in this direction, learned

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counsel drew our attention to a portion of paragraph 4 of the grounds of impugned preventive detention order which reads as follows:

'4.....The sponsoring authority has stated that it is learnt that the relatives of Thiru.Yesudoss @ Sathish are taking steps to take him out on bail in Anti Vice Squad II Cr.No.18/2023 by filing bail application before the appropriate court....'

5. We had the benefit of perusing the grounds booklet served on the detenu and we find that the special report of the sponsoring authority at page 557 of the grounds booklet is undated and the signature of the sponsoring authority also does not contain a date.

6. In response to the aforementioned argument, learned Prosecutor submitted that there is a special report and therefore the same has been relied on.

7. We carefully considered the rival submissions. We find that the special report itself is a self serving document as it is a report of the Sponsoring Authority who has proposed preventive detention of the detenu. Be that as it may, when a special report is undated, the veracity of such a report becomes even more suspect. In this view of the matter, relying on the *ipsi dixit* of the Sponsoring Authority is clearly a flawed application of mind when it comes to clamping of impugned preventive detention order. In this



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view of the matter, we have no difficulty in holding that the impugned preventive detention order is vitiated and the same deserves to be dislodged in this habeas legal drill.

8. Ergo, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 22.05.2023 bearing reference No.181/BCDFGISSSV/2023 made by the second respondent is set aside and the detenu Thiru.Yesudoss @ Sathish, aged 26 years, Son of Thiru.Ambrose, 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.)

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Index : Yes

Neutral Citation : Yes

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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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- 3.The Superintendent of Police
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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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