



H.C.P.No.1488 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 07.03.2023

Coram

The Hon'ble Mr. Justice **M.SUNDAR**
and
The Hon'ble Mr. Justice **M.NIRMAL KUMAR**

H.C.P.No.1488 of 2022

Evangeline
D/o.Late. Samuel Selvaraj

... Petitioner/Sister of Detenu

-VS-

1.The State represented by its
The Secretary to Government (Home),
Prohibition and Excise Department,
Government of Tamilnadu,
Fort St. George,
Chennai – 600 009.

2.The Commissioner of Police,
Office of the Commissioner of Police,
Chennai – 600 007.

3.The Superintendent of Police,
Central Prison, Puzhal,
Thiruvallur District.

4.The Inspector of Police,
Central Crime Branch – I,
Vepery,
Chennai – 600 007.

... Respondents



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Prayer: Habeas Corpus Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus to call for the records of pertaining to the order of detention dated 09.07.2022 passed by the 2nd respondent bearing No: 192/BCDFGISSSV/2022 and quash the same and produce the detenu Titus Samuel, aged about 46 years, S/o.Late P.V.S. Samuel before this Court and set him at liberty forthwith from Central Prison, Puzhal.

For Petitioner	..	Mr.R.Thirumoorthy
For Respondents	..	Mr.R.Muniyapparaj Additional Public Prosecutor assisted by Mr.M.Sylvester John

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 sister of detenu assailing a 'preventive detention order dated 09.07.2022 bearing No.192/BCDFGISSSV/2022' (hereinafter 'impugned detention order' for the sake of convenience). To be noted, fourth respondent is the sponsoring authority and second respondent is the detaining authority as the impugned detention order has been made by second respondent.



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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-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 two adverse cases and one ground case. The ground case which is the substratum of the impugned detention order is Crime No.109/2022 on the file of Central Crime Branch-I, Chennai for alleged offences under Sections 406, 420, 465, 467, 468, 471 read with 34 of 'Indian Penal Code, 1860 (Act 45 of 1860)' ['IPC' for brevity]. 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.R.Thirumoorthy, learned counsel for petitioner and Mr.R.Muniyapparaj, learned State Additional Public Prosecutor assisted by Mr.M.Sylvester John for all four respondents are before us.



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5. Notwithstanding very many averments in the support affidavit learned counsel for petitioner submits that with regard to ground case being Crime No.109/2022 on the file of Central Crime Branch-I, Chennai, in the arrest card a telephone number has been given and the arrest card says that the arrest was intimated to this telephone number. Learned counsel draws our attention to the arrest intimation Form and submits that the telephone number there is different.

6. Responding to aforesaid argument, learned Additional Public Prosecutor on instructions submitted that it is a typographical error as both arrest card and arrest intimation show that the recipient is detenu's mother-in-law. We tested this submission on a demurrer. On being tested on demurrer we find that even if the intention was to intimate the mother-in-law, the change in two digits or putting two digits in different sequence would mean that SMS would have been received by the holder of some other phone number and not the mother-in-law of the detenu. To be noted, there is no material before us to demonstrate that mother-in-law has received intimation. Therefore, we have no difficulty in accepting the submission that the right of the detenu to make effective representation qua impugned detention order has been hampered. To be noted, this right is in the nature of infraction of



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constitutional safeguard ingrained in Clause (5) of Article 22 of the Constitution of India. Therefore, we conclude that there is infraction of constitutional safeguard ingrained in Article 22(5) of the Constitution of India warranting interference qua impugned detention order. The result is, impugned detention order is being dislodged.

7. Ergo, the sequitur is, H.C.P. No.1488 of 2022 is allowed, impugned detention order dated 09.07.2022 bearing reference No:192/BCDFGISSSV/2022 made by the second respondent is set aside and detenu Mr.Titus Samuel, male, aged 46 years, son of Mr.P.V.S. Samuel, now detained in Central Prison, Puzhal, Chennai is directed to be set at liberty forthwith unless required in connection with any other case/s.

(M.S,J.) (M.N.K.,J.)
07.03.2023

Index : Yes / No
Speaking / Non-speaking
Neutral Citation : Yes / No
rsi

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



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M.SUNDAR, J.
and
M.NIRMAL KUMAR, J.

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To

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- 5.The Public Prosecutor,
High Court, Madras.

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