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HCP No.1654 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.03.2023

Coram

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

H.C.P. No.1654 of 2022

Vignesh

.. 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,
Avadi City, Chennai – 600 054.

3.The Superintendent of Prison,
Central Prison at Puzhal-II,
Chennai District – 600 066.

4.The Inspector of Police [Law & Order],
E-5, Sholavaram Police Station,
Chennai.

... 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



HCP No.1654 of 2022

order in No.89/B.C.D.F.G.I.S.S.S.V/2022 dt.23.07.2022 on the file of the 2nd respondent and set aside the same and direct the respondents herein to produce the body of the petitioner/detenu Vignesh S/o.Selvam aged 24 years now confined in Central Prison at Puzhal-II, Chennai before this Court and set him at liberty.

For Petitioner : Mr.M.Mohamed Saifulla
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' [hereinafter 'HCP' for the sake of convenience and brevity] has been filed by the detenu assailing 'detention order dated 23.07.2022 bearing reference Memo No.89/BCDFGISSSV/2022' [hereinafter 'impugned detention order' for the sake of convenience]. To be noted, the fourth respondent is the sponsoring authority and the second respondent is the detaining authority as impugned detention order has been made by the second respondent.

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



HCP No.1654 of 2022

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.489 of 2022 on the file of E-5 Sholavaram Police Station for alleged offences under Sections 294(b), 307 and 506(ii) 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 detention order, it is not necessary to delve into the factual matrix or be detained further by facts.

4. Mr. M. Mohamed Saifulla, learned counsel for petitioner and Mr. R. Muniyapparaj, learned Additional Public Prosecutor assisted by Mr. M. Sylvester John learned counsel for respondents are before us.



HCP No.1654 of 2022

5. Notwithstanding very many averments/grounds in the support affidavit qua captioned HCP, Mr.M.Mohamed Saifulla, learned counsel for petitioner advertent to Page No.97 of the booklet containing the grounds of detention submits that it is described as a statement of mother of the detenu and it is also described as a statement under Section 161(3) of 'The Code of Criminal Procedure, 1973 (2 of 1974)' [hereinafter 'Cr.PC' for the sake of convenience and clarity]. There is no signature and there is no date for this statement. Likewise, a special report in this regard at Page No.98 of the booklet also does not contain date or signature. We have already taken the view that this phenomenon causes impairment of the detenu's sanctus right to make an effective representation against the impugned detention order. To be noted, this sanctus right of the detenu is a constitutional safeguard ingrained in Clause (5) of Article 22 of the Constitution of India. This by itself is good enough to interfere with the impugned detention order.

6. Ergo, the sequitur is, captioned HCP is allowed and the detention order dated 23.07.2022 bearing reference Memo No.89/BCDFGISSSV/2022 made by the second respondent is set aside and



HCP No.1654 of 2022

the detenu Thiru.Vignesh, aged 24 years, son of Thiru.Selvam is directed to be set at liberty forthwith unless required in connection with any other case.

There shall be no order as to costs.

(M.S,J.) (M.N.K.,J.)
08.03.2023

Index: Yes/No

Neutral Citation : Yes/No

cse

Note: Registry to forthwith communicate this order to Jail authorities in Central Prison, Puzhal-II, Chennai

To

- 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,
Avadi City, Chennai – 600 054.
- 3.The Superintendent of Prison,
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E-5, Sholavaram Police Station,
Chennai.
- 5.The Public Prosecutor,
High Court of Madras, Chennai - 104.



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HCP No.1654 of 2022

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

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H.C.P.No.1654 of 2022

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