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H.C.P.No.1554 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.09.2023

CORAM

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

H.C.P.No.1554 of 2023

Kashthuri

.. Petitioner /
mother of the detenu

Vs.

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

2.The Commissioner of Police,
Chennai City Police, Greater Chennai
Commissioner office, Vepery
Chennai – 600 007

3.The Superintendent of Prison
Central Prison
Puzhal, Chennai

4.The Inspector of Police,
M3 Puzhal Police Station
Chennai

.. Respondents

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PRAYER: Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus calling for the records in No.57/BCDFGISSSV/2023 dated 01.03.2023 on the file of second respondent herein and set aside the same as illegal and produce the detenu Abinesh, son of Suresh, aged about 21 years, now confined at Central Prison, Puzhal, Chennai before this Court and set him at liberty.

For Petitioner : Mr.G.Nirmal Krishnan
for Mr.Ilayaraja Kandasamy

For Respondents : Mr.E.Raj Thilak
Additional Public Prosecutor

ORDER

[Order of the Court was made by **R.SAKTHIVEL, J.**]

This 'Habeas Corpus Petition' [hereinafter 'HCP' for the sake of brevity] has been filed by mother of the detenu assailing a 'preventive detention order dated 01.03.2023 bearing reference No.57/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. The impugned preventive 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 five adverse cases and one ground case. The ground case which constitutes substantial part of the impugned preventive detention order is Crime No.53 of 2023 on the file of M-3 Puzhal Police Station for alleged offences under Sections 341, 294(b), 336, 427, 392 read with 397 and 506(ii) of 'Indian Penal Code, 1860 (Act 45 of 1860)' ['IPC' for brevity]. Considering the nature of the challenge to the impugned detention order, it is not necessary to delve into the facts of the case.

4.Mr.G.Nirmal Krishnan, learned counsel representing the 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 affidavit filed in support of the HCP petition, though the petitioner has raised many grounds against the impugned preventive detention order but at the time of final hearing, learned counsel for the petitioner has projected his argument on the point that the statement of Kashthuri wife of Thiru. Suresh (mother of the detenu) and the special report of the Inspector of Police, Crime Branch, M-3 Puzhal Police Station does not contain date, which creates suspicion over the said documents. Further, he drew our attention to a portion of paragraph 4 of the grounds of impugned preventive detention order which reads as follows:

'4.....However, the sponsoring authority has stated that, it has come to know that the relatives of Thiru.Abinesh are taking steps to take him out on bail for M-3 Puzhal Police Station in Crime Nos.943/2022 and 53/2023 by filing bail application before the appropriate court.....'

6.Elaborating the said argument, learned counsel has submitted that the Sponsoring Authority had furnished the aforesaid documents without date to the Detaining Authority. Hence, reasonable doubt arises in the mind of the petitioner whether the said documents were made before passing the impugned preventive detention order or made after passing the



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impugned preventive detention order. The Detaining Authority has not applied his mind in this regard. Hence, the detenu is entitled to the said benefit of doubt. Accordingly, learned counsel prayed to set aside the impugned preventive detention order on the ground of non-application of mind of the Detaining Authority. Accordingly, he has prayed to allow this petition.

7.In response to the aforementioned argument, learned Prosecutor has submitted that sponsoring authority had furnished statement of Kashthuri (mother of detenu) and a special report to the Detaining Authority, and the same were duly considered *inter alia* with other documents. The impugned preventive detention order has been passed after considering all the facts and circumstances of the case. Accordingly, he prayed for dismissal of the petition.

8.We have carefully considered both side submissions. We find that the special report itself is a self-serving document as it is a report of the Sponsoring Authority. When there is no date in the special report and in the statement of the mother of the detenu, whether the said documents have



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been prepared before passing of the impugned preventive detention order or after passing of the impugned preventive detention order is a question which creates doubts over the said documents. The Detaining Authority has not applied his mind in this aspect of the matter before passing the impugned preventive detention order. Hence, we are inclined to set aside the impugned preventive detention order.

9.In the result, this HCP is allowed. Impugned preventive detention order dated 01.03.2023 bearing reference No.57/BCDFGISSSV/2023 made by the second respondent is set aside and the detenu Thiru.Abinesh, aged 21 years, Son of Thiru.Suresh, 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.)

20.09.2023

Index : Yes / No

Speaking order / Non-speaking order

Neutral Citation : Yes/No

gpa/tk

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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Department of Prohibition and Excise (Home)
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- 2.The Commissioner of Police,
Chennai City Police, Greater Chennai
Commissioner of Police, Vepery
Chennai – 600 007
- 3.The Superintendent of Prison
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Puzhal, Chennai
- 4.The Inspector of Police,
M3 Puzhal Police Station
Chennai
- 5.The Public Prosecutor,
High Court, Madras.



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

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