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H.C.P.No.1904 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.03.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

and

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

H.C.P.No.1904 of 2022

S.Parimala
W/o.Sankar

.. Petitioner

Vs.

- 1.The State of Tamil Nadu
represented by its Secretary,
Home, Prohibition and Excise Department,
Fort St.George, Chennai - 600 009.
- 2.The District Collector and District Magistrate
of Tirupathur District,
Tirupathur - 635 601.
- 3.The Superintendent of Police,
Tirupathur - 635 601.
- 4.The Superintendent of Prison,
Central Prison, Vellore - 632 002.
- 5.The Inspector of Police,
Jolarpet Police Station,
Tirupathur District.

.. Respondents



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Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus calling for the records of the second respondent herein in C3/D.O.No.46/2022 dated 22.08.2022, quash the same and direct the third respondent herein to produce the body of the detenu S.Sankar S/o.Selvam, aged 35 years, detained as Bootlegger and confined in Central Prison, Vellore, before this Court and set him at liberty.

For Petitioner : Mr.S.V.Karthikeyan

For Respondents : Mr.R.Muniyapparaj
Additional Public Prosecutor
assisted by
M. Sylvester John, Advocate

ORDER

[Order of the Court was made by **N.ANAND VENKATESH, J.**]

Captioned 'Habeas Corpus Petition' ['HCP' for the sake of brevity] has been filed by wife of detenu assailing a 'preventive detention order dated 22.08.2022 bearing reference C3/D.O.No.46/2022' [hereinafter 'impugned detention order' for the sake of convenience and brevity]. To be noted, fifth 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 'Bootlegger' within the meaning of Section 2(b) of Act 14 of 1982.

3. There are two adverse cases. The ground case which is the sole substratum of the impugned detention order is Crime No.217 of 2022 on the file of Jolarpet Police Station for alleged offences under Sections 4(1)(i), 4(1)(aaa), 4(1-A)(ii) of TNP Act r/w 328 IPC. 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.S.V.Karthikeyan, learned counsel on record for petitioner and Mr.R.Muniyapparaj, learned State Additional Public Prosecutor, assisted by Mr.M.Sylvester John, learned counsel for all respondents are before us.



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5. Notwithstanding very many averments and several grounds that have been raised in the habeas corpus petition support affidavit, Mr.S.V.Karthikeyan, learned counsel appearing for counsel on record for the petitioner exhorted one point in the hearing and that one point turns on arrest intimation form dated 27.07.2022 which is at page 33 of the booklet served on the detenu. Adverting to this Arrest Intimation Form, learned counsel submits that only an SMS Number has been given and there is no signature of the witness and there is nothing to demonstrate the person, much less the relationship of the person with the detenu to whom arrest has been intimated.

6. In response to the aforementioned point exhorted by learned counsel for petitioner, Mr.R.Muniyapparaj, learned Additional Public Prosecutor submitted that the arrest of the detenu has been intimated to his wife.

7. We find that there are no material particulars to substantiate the same. This Court has also taken the similar view in such cases that the



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detention order cannot be sustained. There is also no reference that the mobile number found in the Arrest Intimation Form belong to the wife of the detenu.

8. Before concluding, we also remind ourselves that preventive detention is not a punishment and HCP is a high prerogative writ.

Apropos, the sequitur is, captioned HCP is allowed. Impugned detention order dated 22.08.2022 bearing reference C3/D.O.No.46/2022 made by the second respondent is set aside and the detenu Thiru.S.Sankar, aged 35 years, son of Thiru. Selvam is directed to be set at liberty forthwith, if not required in connection with any other case / cases.

[M.S., J.] [N.A.V., J.]
23.03.2023

Index : Yes/No
Speaking Order/Non-speaking order
Neutral Citation : Yes/No
gm

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



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M.SUNDAR, J.
and
N.ANAND VENKATESH, J.

gm

To

- 1.The Secretary,
Home, Prohibition and Excise Department,
Fort St.George, Chennai - 600 009.
- 2.The District Collector and District Magistrate
of Tirupathur District,
Tirupathur - 635 601.
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High Court, Madras.

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