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H.C.P.No.2007 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.04.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

H.C.P.No.2007 of 2022

Pushpa
W/o.Doss

.. Petitioner/
Mother of detenu

Vs.

1. State of Tamil Nadu
Rep. By The Additional Chief Secretary to Government
Home, Prohibition and Excise Department
Fort St.George
Chennai – 600 009
 2. The Commissioner of Police
The Greater Chennai City
Vepery, Chennai – 600 007
 3. The Superintendent of Prison
Central Prison, Puzhal
Chennai – 600 066
 4. The Inspector of Police
R4, Soundarapandiyanar Angadi Police Station
Chennai
- ... Respondents
Petition filed under Article 226 of the Constitution of India praying

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for issuance of a writ of habeas corpus calling for the records relating to the detention order in Memo No.321/BCDFGISSSV/2002, dated 19.09.2022 passed by the second respondent under the Tamil Nadu Act 14 of 1982 and set aside the same and direct the respondents to produce the petitioner's son Rohan @ Palli, son of Doss, aged about 32 years, the detenu now confined in Central Prison, Puzhal, Chennai before this Court and set the detenu at liberty.

For Petitioner : Mr.G.Nirmal Krishnan
for Mr.D.Gopi Krishnan
For Respondents : Mr.R.Muniyapparaj
Additional Public Prosecutor
Assisted by
Mr.Sylvester John
Advocate

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 mother of detenu assailing a 'preventive detention order dated 19.09.2022 bearing reference BCDFGISSSV No.321 of 2022' [hereinafter 'impugned detention order' for the sake of convenience and brevity]. To be noted, fourth respondent is the sponsoring authority and second respondent is the detaining authority as 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 'Drug Offender' within the meaning of Section 2(e) of Act 14 of 1982.

3. There is one adverse case. The ground case which is the sole substratum of the impugned detention order is Crime No.200 of 2022 on the file of R-4 Soundarapandiyanar Angadi Police Station for an alleged offence under Section 8(c) read with Section 20(b)(ii)B of NDPS Act, 1985. 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. G.Nirmal Krishnan, learned counsel representing the counsel on record for petitioner and Mr.R.Muniyapparaj, learned State Additional Public Prosecutor, assisted by Mr.Sylvester John, Advocate, for all respondents are before us.



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5. Though several points have been urged/raised in the support affidavit qua captioned HCP, Mr.G.Nirmal Krishnan learned counsel for petitioner in the hearing predicated his campaign against the impugned detention order on one point and that one point is, a bail order of a co-accused is referred to but only the first page has been furnished to the detenu as part of the grounds booklet and the remaining pages have not been given to the detenu. This has impaired the detenu's right to make an effective representation which is a constitutional safeguard ingrained in Article 22(5) of the Constitution is learned counsel's say. In support of his contention, learned counsel drew our attention to the booklet and more particularly page 229 thereat.

6. We had the benefit of perusing the booklet which was served on the detenu. After page 229 which is the first page of the said bail order of the co-accused, we find page 235. We find that the bail order of the co-accused is incomplete. We also find that the bail order is in English. This means that pages 230 to 234 (both pages inclusive) are missing.



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7. In response to the above, learned Prosecutor on instructions from the fourth respondent submitted that the impact of non-furnishing of the entire bail order is minimal.

8. Learned Prosecutor goes on to submit that there was delay in getting the lab report and therefore, the final report / charge sheet could not be filed within 60 days in the trial Court. In this regard, we deem it appropriate to point out that Clauses (vii) to (x) of Sub-Rule (7) of Rule 25 of the Criminal Rules of Practice, 2019 and P.S.1 thereat makes it clear that there is a window available for investigating officers to file final report / charge sheet without lab report and that cannot be a ground to return the final report. In this regard, learned Prosecutor brings to our notice an order of a Hon'ble Single Judge of this Court in CrI.O.P.No.15881 of 2022 [*Koolan Vs. The State*] being order dated 29.08.2022. To be noted, in this *Koolan* case, Hon'ble single Judge has referred to an order of a Hon'ble Division Bench made in the Madurai Bench of this Court i.e., H.C.P (MD) No.1498 of 2021 and the date of order in HCP is 11.04.2022. Relevant paragraphs are paragraph 14 and 15 in HCP order of the Division Bench and



these two paragraphs read as follows:

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'14. We have also come across the cases, where the final reports are returned by the Judicial Magistrate / Courts on the ground that they are not accompanied by the Viscera Report, Biology Report, Serological Report, Chemical Report and DNA Test Report. Sub Rule 7 of Rule 25 of the Criminal Rules of Practice, 2019, makes it clear that the Magistrate of the Courts shall not return the final report on the ground that the above reports are not enclosed along with the final report.

15. The Judicial Magistrates / Criminal Courts shall not return the final reports for such non-enclosure of the reports which are listed out as Nos.(vii) to (x) & (xxix) of Sub Rule 7 of Rule 25 of the Criminal Rules of Practice. This direction shall be scrupulously followed by all the Criminal Courts and the Criminal Courts shall also ensure that the final reports are filed On-line. The Director General of Police is required to issue required Circulars to the respective Police Stations to ensure compliance with the above orders.'

However, it is not necessary to delve much into this aspect of the matter in the case on hand as the case on hand turns on the right of detenu to make an effective representation being impaired.

9. We find that the contrary submission of the Prosecutor does not really neutralize this argument of the learned counsel for petitioner as



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minimum impact argument does not impress us owing to bail order of co-accused being relied on by detaining authority in impugned detention order which by itself demonstrates serious infraction of right to make effective representation. This means that impugned detention order deserves to be dislodged.

10. Apropos, the sequitur is, captioned HCP is allowed. Impugned detention order dated 19.09.2022 bearing reference BCDFGISSSV No.321 of 2022 made by the second respondent is set aside and the detenu Thiru.Rohan @ Palli, aged 32 years, son of Thiru.Doss 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.) (M.N.K.,J.)
05.04.2023

Index : Yes

Speaking

Neutral Citation : Yes

gpa

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



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To
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1. The Additional Chief Secretary to Government
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2. The Commissioner of Police
The Greater Chennai City
Vepery, Chennai – 600 007
3. The Superintendent of Prison
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4. The Inspector of Police
R4, Soundarapandiyanar Angadi Police Station
Chennai
5. The Public Prosecutor
Madras High Court, Chennai



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and
M.NIRMAL KUMAR, J.,

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