



H.C.P.No.2196 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.03.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

H.C.P.No.2196 of 2022

Pakkiyanathan

.. Petitioner

Vs.

1.The Secretary to Government,
Home Prohibition and Excise Department,
Secretariat, Fort St. George, Chennai – 09.

2.The District Magistrate & District Collector,
The Nilgiris @ Udhagamandalam,
The Nilgiris District.

3.The Superintendent of Police,
The Nilgiris, The Nilgiris District.

4.The Superintendent of Prison,
Central Prison - Coimbatore,
Coimbatore District.

5.State rep. by its
The Inspector of Police,
Erumad Police Station,
The Nilgiris 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 to call for the entire records relating to the petitioner's son detention under Tamil Nadu Act 14 of 1982 vide detention order dated 21.08.2022 on the file of the second respondent herein made in proceedings Memo Cr.M.P.No.08/2022 [Drug Offender], quash the same as illegal and consequently direct the respondents herein to produce the petitioner's son namely Ajith, s/o.Pakkiyanathan, aged 25 years before this Court and set the petitioner's son at liberty from detention, now the petitioner's son detained at Central Prison, Coimbatore.

For Petitioner : Mr.W.Camyles Gandhi
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 father of detenu assailing a 'preventive detention order dated 21.08.2022 bearing reference Cr.M.P.No.08/2022 [Drug Offender]' (hereinafter 'impugned detention order' for the sake of convenience). 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.

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

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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 'Drug Offender' within the meaning of Section 2(e) of Act 14 of 1982.

3. There is no adverse case and one ground case. The ground case which is the substratum of the impugned detention order is Crime No.36/2022 on the file of Erumad Police Station for alleged offences under Sections 8(c) read with 20(b)(ii)(B) of 'Narcotic Drugs and Psychotropic Substances Act, 1985' [hereinafter 'NDPS Act' for the sake of convenience and brevity]. Owing to the nature of the challenge to the impugned detention order, it is not necessary to delve in to the factual matrix or be detained further by facts.

4. Mr. W. Camyles Gandhi, 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 grounds that have been raised in the support affidavit, Mr. W. Camyles Gandhi, learned counsel on record for petitioner, in the hearing predicated his campaign against the impugned preventive detention order on one point and that point turns on copy of First Information Report, P.T. warrant requisition and English translation of the same which has been relied on as part of the grounds are completely illegible. To be noted, the grounds on which the impugned preventive detention order has been made has been supplied to the detenu in the form of a booklet [hereinafter referred to as 'the said booklet' for the sake of convenience and clarity], pages 3 [First Information Report] and 25 to 28 [P.T. Warrant requisition and its translation] of said booklet, as served on the detenu were placed before us and a careful perusal of the same shows that it is indeed a First Information Report, P.T. warrant requisition and English translation of the same but are completely illegible. Learned counsel submits that this has hampered the right of the detenu to make an effective representation. As this matter turns on illegible copy, learned Additional Public Prosecutor really does not have much of a say and this is more so as the said booklet supplied to the detenu has been placed before us.



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6.Right of the detenu to make an effective representation qua the preventive detention order is a Constitutional safeguard ingrained in Clause (5) of Article 22 of the Constitution of India. In the light of the narrative thus far, this Constitutional safeguard is hampered. The sequitur is, the impugned preventive detention order deserves to be dislodged.

7.Apropos, the sequitur is, captioned HCP is allowed. Impugned detention order dated 21.08.2022 bearing reference Cr.M.P.No.08/2022 made by the second respondent is set aside and the detenu Thiru.Ajith, male, aged 25 years, son of Thiru.Pakkiyanathan 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.)

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Index : Yes / No

Speaking / Non-speaking

Neutral Citation : Yes / No

cse

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



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To

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- 5.The Inspector of Police,
Erumad Police Station,
The Nilgiris District.
- 6.The Public Prosecutor
High Court, Madras.



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and
M.NIRMAL KUMAR, J.,

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