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H.C.P.No.2262 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.04.2023

CORAM

THE HONOURABLE MR.JUSTICE **M.SUNDAR**
and
THE HONOURABLE MR.JUSTICE **M.NIRMAL KUMAR**

H.C.P.No.2262 of 2022

Kalaivani

.. Petitioner

Vs

1.The Secretary to the Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai – 600 009.

2.The District Collector and District Magistrate,
Tirupathur District,
Tirupathur – 635 601.

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

4.The Superintendent of Prison,
Central Prison, Vellore-2.

5.The Inspector of Police,
Vaniyambadi PEW 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 to call for the records in connection with the order of detention passed by the second respondent dated 31.10.2022 in C3/D.O.No.57/2022 against the petitioner husband Pandiyan, Male, aged 28 years S/o.Perumal, who is confined at Central Prison, Vellore and set aside the same and direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner : Mr.D.Balaji
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 wife of detenu assailing a 'preventive detention order dated 31.10.2022 bearing reference C3/D.O.No.57/2022' [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 impugned detention order has been made by second respondent.

2.Impugned detention order has been made under 'The Tamil Nadu



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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 six adverse cases. The ground case which is the sole substratum of the impugned detention order is Crime No.491/2022 on the file of Vaniyambadi Prohibition Enforcement Wing for alleged offences under Sections 4(1)(i), 4(1)(aaa) and 4(1-A)ii of Tamil Nadu Prohibition Act, 1937 read with Section 328 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.D.Balaji, learned counsel on record for petitioner and Mr.R.Muniyapparaj, learned State Additional Public Prosecutor assisted by



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Mr.M.Sylvester John, learned counsel for all respondents are before us.

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5.Though very many grounds have been raised/urged in the support affidavit qua captioned HCP, Mr.D.Balaji learned counsel for petitioner at the hearing predicated his campaign against the impugned preventive detention order on one point and that one point found favour with us. This one point is the Seizure mahazar which is at Page 137 of the grounds booklet is completely illegible. We had the benefit of perusing the grounds booklet as served on the detenu and we have no difficulty in agreeing with the petitioner that it is not readable at all. As this turns on obtaining scenario which comes to light from the booklet which is before us, learned State Additional Public Prosecutor does not have much of a say.

6.We find that the seizure mahazar is a very important document and the same definitely forms part of the substratum of the impugned preventive detention order. This means that the right to make an effective representation qua the impugned preventive detention order has been impaired. We also remind ourselves that such a right to make an effective

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representation is a constitutional safeguard that has been enshrined in Clause (5) of Article 22 of the Constitution of India. As there is impairment of this constitutional safeguard, we have no difficulty in coming to the conclusion that the impugned preventive detention order deserves to be dislodged.

7.Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 31.10.2022 bearing reference C3/D.O.No.57/2022 made by the second respondent is set aside and the detenu Thiru.Pandiyan, male, aged 28 years, son of Thiru.Perumal 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.)

10.04.2023

Index : Yes / No

Neutral Citation : Yes / No

Speaking Order/Non-Speaking Order

cse

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

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To

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- 5.The Inspector of Police,
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Tirupathur District.
- 6.The Public Prosecutor,
High Court, Madras.

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

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