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HCP No.2292 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.07.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

H.C.P.No.2292 of 2022

Kamala

W/o.Babu @ Babu Sanjeevi

.. Petitioner

Vs.

1. The State of Tamil Nadu
Rep. by its Secretary to Government
Prohibition and Excise Department (Home)
Secretariat, Chennai-600 009.
2. The Commissioner of Police
Chennai City, Vepery,
Chennai-600 007.
3. The Superintendent of Prison
Central Prison, Puzhal
Chennai-600 066.
4. The Assistant Commissioner of Police
Forgery Investigation Wing
Central Crime Branch, Chennai.
..Respondents

Petition filed under Article 226 of the Constitution of India praying for
issuance of a writ of habeas corpus to call for the records relating to the



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detenu's detention order passed by the 2nd respondent BCDFGISSSV No.278/2022 dated 02.09.2022 and set aside the same and produce the detenu Babu @ Babu Sanjeevi, male, aged about 54 years, son of Selvaraj, now detained in Central Prison, Puzhal, before this Hon'ble Court and set him at liberty.

For Petitioner : Mr.S.Dhanasekar
For Respondents : Mr.E.Raj Thilak
Additional Public Prosecutor

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 the detenu assailing a 'preventive detention order dated 02.09.2022 bearing reference No.278/BCDFGISSSV/2022' [hereinafter 'impugned preventive 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 the impugned preventive detention order has been made by second respondent.

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



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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 is one adverse case and one ground case. The ground case which constitutes substantial part of substratum of the impugned preventive detention order is Crime No.162 of 2022 on the file of Forgery Investigation Wing, Central Crime Branch, Chennai. for alleged offences under Sections 420, 465, 468, 471 read with 34 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 preventive detention order, it is not necessary to delve into the factual matrix or be detained further by facts.

4. Mr.S.Dhanasekar, learned 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 support affidavit filed in support of captioned HCP, several points have been raised / urged but in the final hearing, Mr.S.Dhanasekar, learned counsel on record for petitioner posited his argument on one point and that one point is the Arrest Intimation Form (page No.161) of the grounds booklet does not contain signature of the witness. Elaborating on this point, learned counsel drew our attention to page No.161 of grounds booklet and submitted that arrest intimation was not communicated to the detenu's son as mentioned in the Arrest Intimation Form and this is buttressed by the witness signature column being left blank in Arrest Intimation Form. On perusing the grounds booklet, we find that the submission of learned counsel is correct.

6. Learned Prosecutor submitted to the contrary and learned Prosecutor submitted that the arrest intimation has been given by way of a 'Short Messaging Service' [SMS]. We are not entering into this factual dispute arena or the question as to whether the arrest intimation can be given by way of SMS. We are proceeding on the simple point that 'SIGN OF WITNESS' column in Arrest Intimation Form is blank which means the



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benefit of doubt has to be given to the detenu. If the benefit of doubt is given to the detenu as we are concerned with Arrest Intimation Form in the ground case which constitutes substantial portion of substratum of the impugned prevention detention order, we have no hesitation in saying that the rights of the detenu to make an effective representation which is a constitutional guarantee ingrained in Clause 5 of Article 22 of the Constitution of India has been impaired. In this regard, we also remind ourselves of Section 41-B(b)(i) of 'The Code of Criminal Procedure, 1973 (2 of 1974)' [hereinafter 'Cr.PC' for the sake of brevity and clarity] which makes it mandatory that memorandum of arrest should be attested by atleast one witness. To be noted, Section 41-B(b)(i) of Cr.PC reads as follows:

'41-B. Procedure of arrest and duties of officer making arrest.- Every police officer while making an arrest shall -

(a)

(b)

(i) attested by at least one witness, who is a member of the family of the person arrested or a respectable member of the locality where the arrest is made;'

Sequitur is, impugned preventive detention order deserves to be dislodged.



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

8. Apropos, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 02.09.2022 bearing reference 278/BCDFGISSSV/2022 made by the second respondent is set aside and the detenu Thiru.Babu @ Babu Sanjeevi, male, aged 54 years, son of Thiru.Selvaraj, 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.)
04.07.2023

Index : Yes
Speaking
Neutral Citation : Yes

mk

P.S: Registry to forthwith communicate this order to Jail authorities in Central Prison, Puzhal, Chennai-66.



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To

1. The Additional Chief Secretary to Government
Home, Prohibition and Excise Department
Secretariat, Chennai-600 009.
2. The Commissioner of Police
Greater Chennai, Vepery
Chennai District.
3. Inspector of Police
J4, Kotturpuram Police Station
Chennai District.
4. The Superintendent of Prison
Central Prison, Puzhal, Chennai.
5. The Public Prosecutor
High Court, Madras.



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

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