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H.C.P.No.2345 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.04.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

H.C.P.No.2345 of 2022

A.Parveen

.. Petitioner

Vs.

1.State of Tamil Nadu,
Rep. by its Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George, Chennai – 600 009.

2.The Commissioner of Police,
Greater Chennai,
Chennai District, Chennai.

3.The Superintendent of Prison,
Central Prison, Puzhal,
Chennai.

4.The Inspector of Police,
D-3 Ice House 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 to call for records in connection with the order of detention passed by the 2nd respondent made in his order No.388/BCDFGISSSV/2022 dated 22.10.2022 against the petitioner's son Amarnath @ Amma Bhai aged about 32 years who is confined at Central Prison, Puzhal, Chennai under Tamil Nadu Act 14 of 1982 as GOONDAS and to quash the same and direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner : Mr.P.Thinesh

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 mother of detenu assailing a 'preventive detention order dated 22.10.2022 bearing reference BCDFGISSSV No.388/2022' [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 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 'Goonda' within the meaning of Section 2(f) of Act 14 of 1982.

3.There are three adverse cases. The ground case which constitutes substantial chunk of the substratum of the impugned detention order is Crime No.384/2022 on the file of D-3 Ice House Police Station for alleged offences under Sections 294(b), 323, 307 and 506(ii) 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.P.Thinesh, learned counsel on record for petitioner and



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Mr.R.Muniyapparaj, learned State Additional Public Prosecutor assisted by

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

5.In the support affidavit qua captioned HCP, several points/grounds have been urged/raised but in the final hearing, Mr.P.Thinesh learned counsel projected his argument on one point and that one point is, one page of confession statement of the detenu is completely illegible. Learned counsel pointed out that confession statement of the detenu is at pages 121 to 127 of the grounds booklet and of these four pages, page 125 is completely illegible. We had the benefit of perusing the grounds booklet and we have no difficulty in agreeing with the submission of learned counsel for petitioner. As this point turns on records before us, learned Additional Public Prosecutor really does not have much of a say.

6.The extension of aforementioned argument is, the confession statement being a critical document and a document which has been relied on by the detaining authority for making the impugned preventive detention order, illegible page in the same has impaired the rights of the detenu to



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make an effective representation qua impugned preventive detention order.

To be noted such a right is a constitutional safeguard ingrained in Article 22(5) of the Constitution of India.

7.The sequitur is, the impugned preventive detention order is vitiated and the same deserves to be dislodged.

8.Apropos, the sequitur is, captioned HCP is allowed. Impugned detention order dated 22.10.2022 bearing reference BCDFGISSSV No.388/2022 made by the second respondent is set aside and the detenu Thiru.Amarnath @ Amma Bhai, male, aged 22 years, son of Thiru.Ashokraj 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.)
26.04.2023

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, Puzhal, Chennai.

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To

- 1.The Secretary to Government,
Home, Prohibition and Excise Department,
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- 2.The Commissioner of Police,
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Chennai District, Chennai.
- 3.The Superintendent of Prison,
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- 5.The Public Prosecutor
High Court, Madras.

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and
M.NIRMAL KUMAR, J.,

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