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H.C.P.No.2354 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.04.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

H.C.P.No.2354 of 2022

K.Raja
Son of R.P..Kani

... Petitioner
Brother of the detenu

Vs.

1. The State Represented by
The Secretary to Government (Home)
Prohibition and Excise Department
Government of Tamil Nadu
Fort St.George
Chennai – 600 009
2. The Commissioner of Police
Greater Chennai
Vepery
Chennai – 600 007
3. The Superintendent of Prison
Central Prison
Palayangkottai
Trinelvei District



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4. The Inspector of Police
Job Rocket, Team – VII
Central Crime Branch
Vepery
Chennai – 600 007

... 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 pertaining to the order of detention dated 30.08.2022 passed by the 2nd respondent in No.263/BCDFGISSSV/2022 and quash the same and produce the detenu Mr.Saravanan, son of Mr.R.P.Kani, aged about 37 years before this Court and set him at liberty and now the detenu has been confined at Central Prison, Palayangkottai, Tirunelveli District.

For Petitioner	:	Mr.D.Ashok Kumar
For Respondents	:	Mr.R.Muniyapparaj Additional Public Prosecutor Assisted by Mr.M.Sylvester John Advocate

ORDER

[Order of the Court was made by M.NIRMAL KUMAR, J.,]

Captioned 'Habeas Corpus Petition' ['HCP' for the sake of brevity] has been filed by brother of the detenu assailing a 'preventive detention order dated 30.08.2022 bearing reference 263/BCDFGISSSV/2022' [hereinafter 'impugned detention order' for the sake of convenience and brevity]. To be



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noted, fourth 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 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 is the sole substratum of the impugned detention order is Crime No.147 of 2019 on the file of Job Racket Wing, Central Crime Branch-I for alleged offences under Sections 24 read with 10 of Emigration Act, 1983. 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.Ashok Kumar, learned counsel representing the counsel on record for petitioner and Mr.R.Muniyapparaj, learned State Additional



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Public Prosecutor, assisted by Mr.M.Sylvester John, Advocate, for all respondents are before us.

5. The main ground urged by the learned counsel for the petitioner is that in the grounds booklet served on the detenu, pages 51, 89, 107 and 125 were totally illegible and hence the same prevented the detenu from making an effective representation before the Authority. That apart, this was relied upon by the Detaining Authority while passing the detention order. On this ground, learned counsel sought for setting aside the detention order.

6. We have carefully gone through the booklet served on the detenu. We find that the aforementioned pages are illegible. In view of the same, the detenu has been deprived of an opportunity of making an effective representation qua the preventive detention order which is a Constitutional safeguard ingrained in Clause (5) of Article 22 of the Constitution of India. 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. On this ground, the impugned detention order is liable to be interfered with by this Court.

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7.The sequitur is, captioned HCP is allowed. Impugned detention order dated 30.08.2022 bearing reference 263/BCDFGISSSV/2022 made by the second respondent is set aside and the detenu Thiru.Saravanan, aged 37 years, son of Thiru.Kani, 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

Speaking

Neutral Citation : Yes

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



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To

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1. The Secretary to Government
Home, Prohibition and Excise Department
Fort St.George
Chennai – 600 009
2. The Commissioner of Police
Tambaram City
Chennai
3. The Superintendent of Prison
Central Prison-II, Puzhal,
Chennai - 66
4. The Inspector of Police
Chemmanchery Police Station
Chennai
5. The Public Prosecutor
Madras High Court, Chennai



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