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H.C.P.No.2431 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.2431 of 2022

Fayaz

S/o.Hari Alexander

.. Petitioner/Detenu

Vs.

1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise (XVI) Department,
Fort St. George, Secretariat,
Chennai - 600 009.

2.The Commissioner of Police,
Office of the Commissioner of Police,
Greater Chennai,
Chennai City.

3.The Superintendent of Prison,
Central Prison at Puzhal,
Chennai – 600 066.

4.The Inspector of Police,
G-5, Secretariat Colony Police Station,
Chennai 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 detention order in BCDFGISSSV No.389/2022 dated 22.10.2022 on the file of the 2nd respondent and set aside the same and direct the respondents herein to produce the body of the detenu Fayaz S/o.Hari Alexander, aged 22 years now confined in Central Prison at Puzhal before this Court and set him at Liberty.

For Petitioner : Mr.M.Mohamed Saifulla

For Respondents : Mr.R.Muniyapparaj
Additional Public Prosecutor
assisted by
Mr.M.Sylvester John, Advocate

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 detenu assailing a 'preventive detention order dated 22.10.2022 bearing reference BCDFGISSSV No.389/2022' [hereinafter 'impugned 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.

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



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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 no adverse case. The ground case which is the sole substratum of the impugned detention order is Crime No.236 of 2022 on the file of G-5 Secretariat Colony Police Station for alleged offences under Sections 294(b), 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.M.Mohamed Saifulla, learned counsel 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.

5. In the support affidavit very many grounds have been urged / raised but in the hearing Mr.M.Mohamed Saifulla, learned counsel for petitioner



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predicated his campaign against the impugned preventive detention order on one point. To be noted, this one point found favour with us and there shall be an elaboration on the same infra.

6. One point urged by learned counsel for petitioner turns on Section 8(1) of Act 14 of 1982 which statutorily prescribes that the grounds on which a person is detained pursuant to a preventive detention order should be communicated to the detenu as soon as may be but not later than five days from the date of detention. To be noted, Section 8(1) of Act 14 of 1982 reads as follows:

'8. (1) When a person is detained in pursuance of a detention order, the authority making the order shall, as soon as may be, but not later than five days from the date of detention, communicate to him the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order to the State Government.'

7. In the case on hand the records before us bring to light that the impugned preventive detention order has been duly served to the detenu on 23.10.2022. This means that the grounds on which the impugned preventive detention order has been made has to be served on the detenu on or before



27.10.2022 but it has been served on the detenu only on 28.10.2022. To be

noted, we had the benefit of perusing the grounds booklet and a scanned reproduction of the relevant stamping therein is as follows:



8. As the aforesaid point turns heavily on records before us, learned Additional Public Prosecutor really does not have much of say. There is a clear infraction of statutory requirements qua Section 8(1) of Act 14 of 1982. This infraction means that the impugned preventive detention order deserves to be dislodged.



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9. To be noted, vide *M.Shylaja Vs.The Additional Chief Secretary to Government and others* reported in *2023/MHC/193*, this bench has set out the operation of Section 8(1) of Act 14 of 1982 and had interfered with preventive detention orders on Section 8(1) infraction point. We reiterate this and apply the same principle in this case also.

10. Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 22.10.2022 bearing reference BCDFGISSSV No.389/2022 made by the second respondent is set aside and the detenu Thiru.Fayaz, aged 22 years, son of Thiru.Hari Alexander, now detained in Central Prison, Puzhal, Chennai is directed to be set at liberty forthwith unless required in connection with any other case/s. There shall be no order as to costs.

(M.S.,J.) (M.N.K.,J.)
10.04.2023

Index : Yes / No
Speaking / Non-speaking
Neutral Citation : Yes / No
rsi

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



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To

- 1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise (XVI) Department,
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Chennai - 600 009.
- 2.The Commissioner of Police,
Office of the Commissioner of Police,
Greater Chennai,
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- 3.The Superintendent of Prison,
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- 5.The Public Prosecutor,
High Court, Madras.



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