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H.C.P.No.2479 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.06.2023

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THE HONOURABLE MR.JUSTICE **M.SUNDAR**
and
THE HONOURABLE MR.JUSTICE **R.SAKTHIVEL**

H.C.P.No.2479 of 2022

Vinotha

.. Petitioner

VS

1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai – 9.

2.The District Collector and District Magistrate,
Office of the District Collector and
District Magistrate, Thiruvarur District.

3.The Superintendent of Police,
O/o. Superintendent of Police,
Thiruvarur District.

4.The Superintendent of Prison,
Trichy Central Prison, Trichy District.

5.The Inspector of Police,
Koothanallur Police Station,
Thiruvarur District.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus to call for the entire records connected with the detention order in C.O.C. No.40/2022 dated 13.11.2022 on the file of the second respondent and set aside the same and direct the respondents to produce the body and



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person of petitioner's husband Thiru.Chellamuthu, S/o.Arumugam, aged about 38 years, now confined at Central Prison, Trichy before this Court and set him at liberty forthwith.

For Petitioner : Mr.S.Senthilvel
for Mr.P.Muthamizh Selvakumar

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 detenu assailing a 'preventive detention order dated 13.11.2022 bearing reference C.O.C. No.40/2022' [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 Prevention of Dangerous Activities of Bootleggers, Cyber law offenders, Drug-offenders, Forest-offenders, Goondas, Immoral traffic offenders, Sand-offenders, Sexual-offenders, Slum-grabbers



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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 four adverse cases. The ground case which constitutes substantial part of substratum of the impugned detention order is Crime No.687 of 2022 on the file of Nannilam Prohibition Enforcement Wing for the alleged offence under Section 4(1)(aaa) r/w 4(1-A) of Tamil Nadu Prohibition Act, 1937 and 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.S.Senthilvel, learned counsel representing the counsel on record for petitioner and Mr.E.Raj Thilak, learned State Additional Public Prosecutor for all respondents are before us.

5. Captioned HCP turns on very short point. In the grounds booklet supplied to the detenu, the analysis report (பகுப்பாய்வு அறிக்கை) dated 26.10.2022 bearing reference Thanjai/Ma.Li.Na.



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To be noted, impugned preventive detention order has been clamped branding the detenu as a bootlegger and therefore the analysis report is a very critical and crucial document. We had the benefit of perusing the grounds booklet served on the detenu and we are unable to disagree with the counsel for the petitioner.

6. Learned Prosecutor submitted to the contrary and submitted that it is only a report but we are unable to sustain this submission as the impugned preventive detention order has been clamped on the detenu branding him as a bootlegger as already alluded to supra and therefore analysis report is critical qua detenu making a representation.

7. The aforementioned flaw in the grounds booklet in our view has impaired the detenu's right to make an effective representation qua the impugned preventive detention order. To be noted, such right of the detenu is a sanctus right ingrained in Article 22(5) of The Constitution of India. To put it differently, a sanctus constitutional safeguard has been infringed. Therefore, we have no hesitation in holding that impugned preventive detention order deserves to be dislodged.



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8. Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 13.11.2022 bearing reference C.O.C. No.40/2022 made by the second respondent is set aside and the detenu Thiru.Chellamuthu, aged 38 years, son of Thiru.Arumugam, 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.)
15.06.2023

Index : Yes / No
Neutral Citation : Yes / No
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P.S: Registry to forthwith communicate this order to Jail authorities in Central Prison, Tiruchirappalli.

To

- 1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai – 9.
- 2.The District Collector and District Magistrate,
Office of the District Collector and
District Magistrate, Thiruvarur District.
- 3.The Superintendent of Police,
O/o. Superintendent of Police, Thiruvarur District.
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- 5.The Inspector of Police,
Koothanallur Police Station,
Thiruvarur District.
- 6.The Public Prosecutor, High Court, Madras.



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

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