



WEB COPY



H.C.P.No.2511 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.06.2023

Coram

THE HON'BLE MR.JUSTICE **M.SUNDAR**
and
THE HON'BLE MR.JUSTICE **R.SAKTHIVEL**

H.C.P.No.2511 of 2022

Vicky @ Vigneshkumar

.. Petitioner

VS

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

2.The Commissioner of Police,
Greater Chennai, Vepery, Chennai – 7.

3.The Superintendent of Prison,
Central Prison, Puzhal, Chennai - 66

4.The Inspector of Police,
R-5 Virugambakkam Police Station,
Chennai – 93.

.. 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 in connection with the order of detention passed by the second respondent vide order BCDFGISSSV No.417/2022 dated 10.11.2022 against the petitioner (Vicky @ Vigneshkumar), son of Jayasekaran, male, aged about 38 years, confined at Central Prison II, Puzhal, Chennai and set aside the same and direct the respondents to produce the detenu before this Court and set him at liberty.



H.C.P.No.2511 of 2022

For Petitioner : Ms.M.A.Praveena
for Mr.R.Kisoth Kumar

For Respondents : Mr.E.Raj Thilak,
Additional Public Prosecutor

WEB COPY

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 the detenu assailing a 'preventive detention order dated 10.11.2022 bearing reference No.417/BCDFGISSSV/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-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.



H.C.P.No.2511 of 2022

3. There is one adverse case. The ground case which constitutes substantial part of substratum of the impugned detention order is Crime No.671 of 2022 on the file of R-5 Virugambakkam Police Station for the alleged offences under Sections 341, 294(b), 323, 336, 427, 392, 307 and 506(ii) of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] r/w Section 25(1A) of Arms Act, 1959. 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. Ms.M.A.Praveena, 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. In the support affidavit qua captioned HCP, multiple points have been raised but in the hearing, one point urged by learned counsel for petitioner found favour with us and that point turns on Article 22 (5) of the Constitution of India. Learned counsel drew our attention to the arrest memo (கைது குறிப்பாணை) at pages 141 and 143 of the grounds booklet and submitted that though the arrest memo says that the factum of arrest was communicated through SMS to a mobile number and that mobile number is said to belong to the mother of the detenu,



H.C.P.No.2511 of 2022

there is no witness signature in the arrest memo. The witness signature column is blank. There is no other material to demonstrate that SMS was actually sent. This means that the right of the detenu to make an effective representation which is a constitutional safeguard ingrained in Article 22(5) of the Constitution of India is impaired. As this ground cannot cut ice with us, we are inclined to dislodge the preventive detention order.

6. Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 10.11.2022 bearing reference No.417/BCDFGISSSV/2022 made by the second respondent is set aside and the detenu Thiru.Vicky @ Vigneshkumar, aged 38 years, son of Thiru.Jayasekaran, 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.)
13.06.2023

Index : Yes
Neutral Citation : Yes
mmi

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



H.C.P.No.2511 of 2022

To

WEB COPY

- 1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George, Chennai – 9.
- 2.The Commissioner of Police,
Greater Chennai, Vepery, Chennai – 7.
- 3.The Superintendent of Prison,
Central Prison, Puzhal, Chennai - 66
- 4.The Inspector of Police,
R-5 Virugambakkam Police Station,
Chennai – 93.
- 5.The Public Prosecutor
High Court, Madras.



WEB COPY



H.C.P.No.2511 of 2022

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

mmi

H.C.P.No.2511 of 2022

13.06.2023