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H.C.P.No.2493 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.06.2023

Coram

THE HON'BLE MR.JUSTICE **M.SUNDAR**
and
THE HON'BLE MRS. JUSTICE **K. GOVINDARAJAN THILAKAVADI**

H.C.P.No.2493 of 2022

Bairoja

.. Petitioner

VS

- 1.The Secretary to Government of India,
Ministry of Home Affairs
(Department of Internal Security)
North Block, New Delhi – 110 001.
- 2.The State of Tamil Nadu
Rep. By its Secretary,
Home, Prohibition and Excise Department,
Fort St.George, Chennai – 9.
- 3.The Commissioner of Police/ Detaining Authority,
Office of the Commissioner of Police,
Coimbatore City, Coimbatore – 641 018.
- 4.The Superintendent,
Central Prison, Coimbatore – 641 018.
- 5.The Inspector of Police,
C1 Kattor Police Station, Coimbatore.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus to produce the body of the detenu by name Sadham Hussain, son of Sulaiman, aged 32 years, presently confined at Central Prison, Coimbatore, before this Court and set him at liberty forthwith, after calling for the records pertaining to



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the detention order and grounds of detention order Tamil and English dated 12.10.2022 vide C.No.02/NSA/IS/2022 passed by 3rd respondent, quash the same.

For Petitioner : Dr.S.Manoharan
for Mr.A.Nowfal

For Respondents : Mr.R.Rajesh Vivekananthan
Deputy Solicitor General
for R1
Mr.R.Muniyapparaj
Additional Public Prosecutor
assisted by
Mr.M.Sylvester John
for R2 to R5

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 the detenu assailing a 'preventive detention order dated 12.10.2022 bearing reference C.No.02/NSA/IS/2022' [hereinafter 'impugned detention order' for the sake of convenience and brevity]. To be noted, fifth respondent is the sponsoring authority and third respondent is the detaining authority as impugned detention order has been made by third respondent under The National Security Act, 1980 (Central Act 65 of 1980).

2. There is no adverse case. The ground case which is the sole substratum of the impugned detention order is Crime No.478 of 2022



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on the file of C1 Kattoor Police Station, Coimbatore, for alleged offences under Sections 153A and 285 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.

3. Dr.S.Manoharan, learned counsel on record for petitioner, Mr.R.Rajesh Vivekananthan, learned Deputy Solicitor General for first respondent and Mr.R.Muniyapparaj, learned State Additional Public Prosecutor assisted by Mr.M.Sylvester John, learned counsel, for respondents 2 to 5 are before us.

4. In the support affidavit qua captioned HCP, very many grounds have been raised but in the hearing, Dr.S.Manoharan, learned counsel for petitioner posited his campaign against the impugned preventive detention order on one point and that one point turns on copy of a critical document (adverted to in the grounds of impugned preventive detention order) is not legible and is not readable in the grounds booklet served on the detenu. Elaborating on this submission, learned counsel for petitioner emphasises that it is a solitary case preventive detention order and drew our attention to paragraph 6 of the



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grounds of impugned preventive detention order wherein there is a mention about the house search and the material that was seized during such search. Most relevant portion of the impugned preventive detention order in this regard is contained in paragraph 6 and that relevant portion reads as follows:

'6....During investigation of this case, on 03.10.2022, the Inspector of Police, Law and Order, C-1 Kattoor Police Station, Coimbatore City submitted a requisition before the Hon'ble Judicial Magistrate No.II, Coimbatore for "house search" and on search of the house of the accused, a T-shirt printed as SDPI, a T-shirt printed as PFI, a shirt printed as SDPI KOVAI with flag, two white cotton cloths with knots, a letter issued by NIA to the accused, a PFI flag, a cell phone, a book, cloths of the accused and etc., items were seized under the house search form in the presence of the independent witnesses. His remand was periodically extended and stands posted for 20.10.2022. Now he is a remand prisoner in Central Prison, Coimbatore. Investigation in this case is pending.'

5. Though the grounds of impugned preventive detention order not just notices but specifically adverts to the house search and the materials that were seized during the house search, list in what is referred to as Form No.85 (முதலாம் படி) which has been furnished to the



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detenu as part of the booklet at pages 41 and 42 is not legible is his say. This Bench had the benefit of perusing the grounds booklet that was served on the deenu and we are unable to disagree with the submission made by learned counsel for petitioner that list of materials seized which have been adumbrated in the namoona though the entire form containing an adumbration of material said to have been seized in search adverted to in the impugned preventive detention order is very hazy. To be noted, Sl.Nos.6 and 11 in particular are completely not readable at all.

6. As the above point turns on matters of record before us, learned Deputy Solicitor General of India for the first respondent or the learned State Additional Public Prosecutor for respondents 2 to 5 really do not have much of a say. This Court reminds itself of the cardinal principle that a detenu who is clamped with a preventive detention order has a very sanctus right to make a representation and the right is so sanctus that the detenu should be able to make an effective representation. We also remind ourselves that this sanctus right to make a representation is a constitutional guarantee which has been ingrained in Clause 5 of Article 22 of the Constitution of India. In the light of the seizure memo not being clear, hazy, smudged and not readable/legible, we have no hesitation in accepting the sequitur



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submission of learned counsel that the aforesaid constitutional guarantee has been impaired in the case on hand.

7. In the light of infraction of the aforementioned constitutional guarantee, the necessary sequitur that follows is, the impugned preventive detention order deserves to be dislodged.

8. Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 12.10.2022 bearing reference C.NO.02/NSA/IS/2022 made by the third respondent is set aside and the detenu Thiru.S.Sadham Hussain, aged 32 years, son of Thiru.Sulaiman, 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.) (K.G.T.,J.)
08.06.2023

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, Coimbatore.



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To

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- 6.The Public Prosecutor
High Court, Madras.



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**M.SUNDAR, J.,
and
K. GOVINDARAJAN THILAKAVADI, J.,**

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