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H.C.P.No.2525 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.2525 of 2022

Gayathri

.. 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.

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

4.The Inspector of Police,
Anti Vice Squad II in charge
Anti Vice Squad I,
Greater Chennai Police.

.. 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 relating to the detention order passed by 2nd respondent pertaining to the order made in BCDFGISSSV No.390/2022 dated 31.10.2022 in detaining the detenu under Section 2(g) of Tamil Nadu Act 14 of 1982, as a Immoral Traffic Offender and quash the same and direct the respondents to



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produce the detenu Babu @ Rajan @ Varathan @ Varatharajan, son of Kailasam, aged about 52 years, who is detained at Central Prison, Puzhal, at Chennai before this Court and set him at liberty.

For Petitioner : Mr.J.William Shakeshpere
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 31.10.2022 bearing reference No.390/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



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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 'Immoral Traffic Offender' within the meaning of Section 2(g) 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.02 of 2022 on the file of Anti Vice Squad-II for the alleged offences under Sections 3(2)(a), 4(1), 5(1)(a) of 'The Immoral Traffic (Prevention) Act, 1956' [hereinafter 'ITP Act' for the sake of convenience and clarity], subsequently altered into one under Sections 3(2)(a), 4(1), 5(1)(a), 6(1) and 7(1) of ITP Act. 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.J.William Shakesphere, learned 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)



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of the Constitution of India. Learned counsel drew our attention to the arrest memo (கைது குறிப்பாணை) at pages 167 and 169 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 wife of the detenu, 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.

6. Learned Prosecutor in his contra submission submitted that intimation was sent by speed post also and drew our attention to page No.169. Page No.169 is only postal receipt which can at best demonstrate despatch but there is no acknowledgement. Therefore, we are inclined to dislodge the preventive detention order.

7. Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 31.10.2022 bearing reference No.390/BCDFGISSSV/2022 made by the second respondent is set aside and the detenu Thiru.Babu @ Rajan @ Varathan @ Varatharajan, aged 52 years, son of Thiru.Kailasam, is directed to be set at liberty



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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.

To

- 1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George, Chennai – 9.
- 2.The Commissioner of Police,
Greater Chennai.
- 3.The Superintendent,
Central Prison, Puzhal, Chennai.
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High Court, Madras.



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

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