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H.C.P.No.2603 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.04.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE DR.JUSTICE D.NAGARJUN

H.C.P.No.2603 of 2022

R.Mathi
Wife of Rajasekar

... Petitioner/
wife of detenu

Vs.

1. The State of Tamil Nadu
Rep. By its Secretary to Government
Home, Prohibition and Excise Department
Secretariat
Chennai-9
2. The District Collector and District Magistrate
Cuddalore District
Cuddalore
3. The Superintendent of Police
Cuddalore District
Cuddalore
4. The Superintendent
Central Prison
Cuddalore

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5. The Inspector of Police
Puthuchathiram Police Station
Cuddalore 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 records in C3/D.O/31/2022 dated 01.11.2022 on the file of the 2nd respondent and quash the same as illegal and consequently direct the respondents to produce the petitioner's husband Thiru.Rajasekar, son of Arasan, aged about 38 years, who is now detained in Central Prison, Cuddalore, before this Court and set him at liberty.

For Petitioner	:	Mr.K.Gandhi Kumar
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 wife of detenu assailing a 'preventive detention order dated 01.11.2022 bearing reference C3/D.O/31/2022' [hereinafter 'impugned detention order' for the sake of convenience and brevity]. To be noted, fifth

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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.

3. There is one adverse case. The ground case which is the sole substratum of the impugned detention order is Crime No.467 of 2022 on the file of Puduchathiram Police Station for alleged offences under Sections 447, 395 read with Section 397 of 'Indian Penal Code, 1860 (Act 45 of 1860)' ['IPC' for brevity]. 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.



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4. Mr.K.Gandhi Kumar, learned counsel on record for petitioner and Mr.R.Muniyapparaj, learned State Additional Public Prosecutor, assisted by Mr.M.Sylvester John, Advocate, for all respondents are before us.

5. Though in the support affidavit qua captioned HCP, several grounds have been raised/urged, Mr.K.Gandhi Kumar, learned counsel for petitioner in the hearing projected his argument on one point and that is non-supply of remand orders made by the Judicial Magistrate in the ground case and in the adverse case. Learned counsel drew our attention to Paragraph 5 of the impugned preventive detention order and took us through the same to demonstrate that the Detaining Authority has relied on the remand orders. Thereafter, learned counsel submitted that though the Detaining Authority has relied on the remand orders, copies of the same same have not been furnished to the detenu in the grounds booklet. To further support his argument, learned counsel showed us the remand requisition i.e., prayer for remand made by the police in the ground case as well as the adverse case which are at Pages 29 and 70 respectively of the grounds booklet. It is the specific say of learned counsel that while the remand requisition i.e., prayer



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for remand made by the police has been enclosed as part of the booklet, the actual orders of remand made by the Judicial Magistrate have not been supplied to the detenu though the same have been adverted in the impugned preventive detention order.

6. In response to the above submission, learned Prosecutor submitted to the contrary. Learned Prosecutor took us though the Arrest Intimation Memo and submitted that the detenu has been intimated about the arrest.

7. We carefully considered the submissions of the learned counsel for petitioner and learned Prosecutor. We are unable to accept the submission of the Prosecutor, as arrest is by the police and the remand is a judicial order made by the Judicial Magistrate. We remind ourselves that even an arrestee arrested by the police while produced before the Judicial Magistrate may not be remanded to judicial custody or police custody as it is subject to satisfaction of the Judicial Magistrate concerned. We are mentioning this only to say that remand order is an important aspect of incarceration. In this view of the matter we are unable to accept the submission of the Prosecutor.

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8. In addition to the above point as a buttressing submission, learned counsel submitted that a co-accused in the same ground case was also clamped with similar preventive detention order, the same was assailed by the co-accused in H.C.P.No.2374 of 2022 and the same was allowed by a detailed order of this Court dated 23.02.2023. To be noted, this order is reported in Madras High Court neutral citation and the citation is **2023/MHC/871**.

9. As we are convinced that a very vital document which has been referred to in the impugned preventive detention order has not been supplied as part of the grounds to the detenu, it has impaired the detenu's right to make an effective representation against the preventive detention order which is a constitutional guarantee enshrined in Clause (5) of Article 22. We have no hesitation in saying that the impugned detention order deserves to be dislodged.

10. Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 01.11.2022 bearing reference C3/D.O/31/2022 made



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by the second respondent is set aside and the detenu Thiru.Rajasekar, aged 38 years, son of Thiru.Arasan 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.)

(D.N.R.,J.)

06.04.2023

Index : Yes
Speaking
Neutral Citation : Yes
gpa

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

To

1. The Secretary to Government
Home, Prohibition and Excise Department
Secretariat
Chennai-9
2. The District Collector and District Magistrate
Cuddalore District
Cuddalore
3. The Superintendent of Police
Cuddalore District
Cuddalore

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4. The Superintendent
Central Prison
Cuddalore
5. The Inspector of Police
Puthuchathiram Police Station
Cuddalore District
6. The Public Prosecutor
Madras High Court, Chennai



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M.SUNDAR, J.,
and
Dr.D.NAGARJUN, J.,

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