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H.C.P.No.2584 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.04.2023

CORAM

THE HONOURABLE MR.JUSTICE **M.SUNDAR**
and
THE HONOURABLE MR.JUSTICE **M.NIRMAL KUMAR**

H.C.P.No.2584 of 2022

Muthulakshmi

.. Petitioner

Vs

- 1.The Chief Secretary to Government of Puducherry,
Union of Puducherry, Chief Secretariat,
Puducherry.
- 2.The Secretary to Lieutenant Governor,
Rajnivas, Puducherry.
- 3.The District Magistrate cum Authorized Officer,
Office of the District Magistrate,
District Collectorate, Puducherry.
- 4.The Superintendent of Police (South),
Puducherry.
- 5.The Chief Superintendent of Jail,
Central Prison, Kalapet, Puducherry.
- 6.The Inspector of Police,
Ariyankuppam Police Station,
Puducherry.

.. Respondents



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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 in No.6/DM/RO/D2/PPASAA/2022 dated 22.08.2022 by the third respondent under the Puducherry Prevention of Anti-Social Activities Act, 2008 (Act 10 of 2010) and set aside the same and direct the respondents to produce petitioner's son Mugilan, son of Sivanesan, aged about 27 years, the detenu, now confined in Central Prison, Kalapet, Puducherry before this Court and set him at liberty.

For Petitioner : Mr.M.Subash
For Respondents : Mr.K.S.Mohandass,
Public Prosecutor (Puducherry)

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 22.08.2022 bearing reference No.6/DM/RO/D2/PPASAA/2022' [hereinafter 'impugned detention order' for the sake of convenience and brevity]. To be noted, sixth respondent is the sponsoring authority and third respondent is the detaining authority as impugned detention order has been made by third respondent.



H.C.P.No.2584 of 2022

2. Impugned detention order has been made under 'The Puducherry Prevention of Anti-Social Activities Act, 2008 (Act 10 of 2010)' [hereinafter 'Puducherry Preventive Detention Act' for the sake of convenience and clarity] on the premise that the detenu is a 'Dangerous Person' within the meaning of Section 2 (c) of Puducherry Preventive Detention Act.

3. There are six adverse cases. The ground case which is the sole substratum of the impugned detention order is Crime No.98 of 2022 on the file of Ariyankuppam Police Station for alleged offences under Sections 294(b), 506(ii) of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] and Section 34 A(I) of Pondicherry Police (Amendment) Act, 1965. 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.M.Subash, learned counsel on record for petitioner and Mr.K.S.Mohandass, learned Public Prosecutor for Union Territory of Puducherry for all respondents are before us.

Page Nos.3/9



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5. In the support affidavit qua captioned HCP very many grounds/points have been urged/raised but in the hearing, learned counsel predicated his campaign against the impugned preventive detention order on one point and that one point is clearly articulated in sub-para (f) of paragraph 4 of the support affidavit and the same reads as follows:

'f. As per section 9(1) of the Act 10/2010 the grounds of detention along with documents have to be served on the detenue within seven days from the date of detention. In the instant case the booklet were not served to the detenue within seven days from the date of detention. It is submitted that a grave injustice has been caused to the detenue by the 3rd respondent and also there was no date mentioned in the grounds of detention and the booklet to show that when the detention order, grounds of detention and booklet was furnished to the detenue.'

6. Elaborating on the aforesaid point, learned counsel for petitioner submitted that the detention order is dated 22.08.2022, the detention order was served on the detenu on the same day i.e., 22.08.2022 and therefore 22.08.2022 is the date of detention



H.C.P.No.2584 of 2022

pursuant to the impugned preventive detention order. Learned counsel submits that not later than seven days therefrom is 28.08.2022 but the grounds of detention had been disclosed/served to the detenu only on 30.08.2022.

7. Learned Public Prosecutor (Puducherry) submitted that the impugned preventive detention order has been served on the same day i.e., 22.08.2022. We also perused the counter affidavit filed by the Union Territory of Puducherry. We find from the counter affidavit that the aforementioned sub-para (f) of paragraph 4 of the support affidavit qua captioned HCP has not been met at all. This takes us back to the argument of the Prosecutor that the impugned preventive detention order was served on the detenu on the same day i.e., 22.08.2022 itself. As regards Section 9(1) of Puducherry Preventive Detention Act, we are concerned not with the serving of the preventive detention order but we are concerned with the serving of the grounds booklet on which the impugned preventive detention order has been made. To be noted, Section 9(1) of Puducherry Preventive Detention Act is captioned 'Grounds of order of detention to be disclosed to detenu' and the same reads as follows:

'Grounds of order of detention to be disclosed



H.C.P.No.2584 of 2022

to detenu

9. (1) *When a person is detained in pursuance of a detention order, the authority making the order shall, as soon as may be, but not later than seven days from the date of detention, communicate to him the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order to the Government.'*

8. We have no difficulty in coming to the conclusion that there is clear infraction of Section 9(1) of Puducherry Preventive Detention Act and the sequitur is impugned preventive detention order deserves to be dislodged.

9. Before we write concluding paragraph of this order we deem it appropriate to recall that this Bench has, in another matter where *in pari materia* provision viz., Section 8 of Act 14 of 1982 came into play, set aside preventive detention order on the ground that grounds of preventive detention had not been served to the detenu within the statutorily prescribed time frame. To be noted, Section 8(1)



H.C.P.No.2584 of 2022

of Act 14 of 1982 statutorily prescribes that the grounds on which a person is detained pursuant to a preventive detention order should be communicated to the detenu as soon as may be but not later than five days from the date of detention. This is vide Shylaja case in ***M.Shylaja Vs.The Additional Chief Secretary to Government and others*** reported in Neutral Citation of Madras High Court being **2023/MHC/193**.

10. Apropos, the sequitur is, captioned HCP is allowed. Impugned detention order dated 22.08.2022 bearing reference No.06/DM/RO/D2/PPASAA/2022 made by the second respondent is set aside and the detenu Thiru.Mugilan, aged 27 years, son of Thiru.Sivanesan, 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.) (M.N.K.,J.)
25.04.2023

Index : Yes

Neutral Citation : Yes

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

Page Nos.7/9



H.C.P.No.2584 of 2022

WEB COPY

To

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H.C.P.No.2584 of 2022

**M.SUNDAR, J.,
and
M.NIRMAL KUMAR, J.,**

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H.C.P.No.2584 of 2022

25.04.2023

Page Nos.9/9