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H.C.P.No.48 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.04.2023

CORAM

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

H.C.P.No.48 of 2023

A.Perimaiye

.. Petitioner

Vs

- 1.State of Tamil Nadu
Rep. by its Secretary,
Home, Prohibition and Excise Department,
Fort St.George, Chennai - 9.
- 2.The District Magistrate and District Collector
of Tiruvallur District, Tiruvallur District.
- 3.The Superintendent of Police,
Tiruvallur, Tiruvallur District.
- 4.The Superintendent of Prison,
Central Prison, Puzhal, Chennai - 66.
- 5.The Inspector of Police,
Kavarapettai Police Station,
Gummidipoondi Circle,
Tiruvallur District.

.. Respondents

Petition filed under Article 226 of the Constitution of India
praying for issuance of a writ of habeas corpus calling for the records
pertaining to the detention order in BCDFGISSSV No.17/2022 dated

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12.05.2022 passed by the 2nd respondent under the Tamilnadu Act 14 of 1982 and set aside the same and direct the respondents to produce the petitioner's husband S.Ayyar, aged 55 years, S/o.Subbaiya, the detenu now confined in Central Prison, Chennai before this Court and set the petitioner's husband S.Ayyar, Age 55 years, S/o.Subbaiya, the detenu herein at liberty.

For Petitioner : Mr.S.Senthamizhan
For Respondents : Mr.R.Muniyapparaj
Additional Public Prosecutor
assisted by Mr.M.Sylvester John

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 12.05.2022 bearing reference BCDFGISSSV No.17/2022' [hereinafter 'impugned detention order' for the sake of convenience and brevity]. To be noted, fifth 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



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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 'Drug Offender' within the meaning of Section 2(e) of Act 14 of 1982.

3.The ground case which is the sole substratum of the impugned detention order is Crime No.46 of 2022 on the file of Kavarapettai Police Station for alleged offences under Section 8(c) r/w 20(b)(ii)(C), 25,29(i) of Narcotic Drugs and Psychotropic Substances Act, 1985. 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.S.Senthamizhan, learned counsel on record for petitioner and Mr.R.Muniyapparaj, learned State Additional Public Prosecutor assisted by Mr.M.Sylvester John, learned counsel, for all respondents are before us.



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5. Learned counsel for petitioner drew our attention to First Information Report (FIR) in the ground case i.e., FIR No.46 of 2022 dated 11.03.2022 on the file of Kavarapettai Police Station, Thiruvallur District (to be noted page 9 of the grounds booklet). Learned counsel pointed out that while the detenu in the captioned matter is cited as No.1 in the list of named accused, one Thiru.Edwinraj is cited as No.4 in the same list. Therefore, Thiru.Edwinraj, S/o.Thiru.Louise Amirtharaj is a co-accused in the same ground case, is his say. Learned counsel submits that Thiru.Edwinraj also was clamped with a preventive detention order which is identical to the impugned preventive detention order; that impugned preventive detention order was challenged in this Court by Thiru.Edwinraj's father Thiru.Louise Amirtharaj vide H.C.P.No.1274 of 2022 and it was allowed by Honourable Predecessor Bench in and by an order dated 04.01.2023 and a scanned reproduction of the same is as follows:



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H.C.P.No.1234 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 04.01.2023

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH
AND
THE HONOURABLE Mr.JUSTICE N.ANAND VENKATESH

H.C.P.No.1274 of 2022

Louis Amirtharaj

.. Petitioner

Vs.

1.State of Tamil Nadu represented by
its Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George, Chennai-9.

2.The District Magistrate and District Collector,
Office of the District Magistrate and District Collector,
Tiruvallur District.

3.The Superintendent of Prison,
Central Prison, Puzhal,
Chennai - 2.

4.The Inspector of Police,
Gummidipoondi Circle,
Tiruvallur District.

.. Respondents

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H.C.P.No.48 of 2023



H.C.P.No.1234 of 2022

Petition filed under Article 226 of the Constitution of India, praying to issue a WRIT OF HABEAS CORPUS to calling for the records relating to the detention order passed by the second respondent in detention order B.C.D.F.G.I.S.S.S.V.No.25/2022 dated 31.05.2022 and to quash the same and direct the respondents to produce the body or person of the detenu Edwinraj, S/o.Louis Amirtaraj, aged 24 years, before this Court and set him at liberty, now detained at the Central Prison, Puzhal II, Chennai.

For Petitioner : Mr.N.Nishar Ahamed

For Respondents : Mr.R.Muniyapparaj
Additional Public Prosecutor

ORDER

[Order of the Court was made by P.N.PRAKASH, J.]

The petitioner is the father of the detenu viz., Edwinraj, S/o.Louis Amirtaraj, aged 24 years. The detenu has been detained by the 2nd respondent by his order in B.C.D.F.G.I.S.S.S.V.No.25/2022 dated 31.05.2022, holding him to be a 'Drug Offender', as contemplated under Section 2(e) of Tamil Nadu Act 14 of 1982. The said order is under challenge in this Habeas Corpus Petition.

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H.C.P.No.1234 of 2022

2. We have heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the respondents. We have also perused the records produced by the Detaining Authority.

3. Amidst several grounds raised by the learned counsel for the petitioner to attack the impugned order of detention, he has mainly focused his argument on the ground that the detaining authority failed to ask clarification from the sponsoring authority about non serving of arrest memo to the family members, relatives or friends of the detenu and there is no proof to show that the intimation of arrest was given, which clearly shows non-application of mind on the part of detaining authority.

4. The learned Additional Public Prosecutor submitted that the detenu was arrested on 10.03.2022 and on completion of the investigation, final report was laid before the Special Court, (1 Additional Court for the Exclusive Trial of Cases under the Narcotic Drugs and Psychotropic Substances Act, 1985), Chennai, on 19.08.2022 on time and the same was taken on file as C.C.No.187 of 2022.

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H.C.P.No.1274 of 2022

5. A close reading of the booklet shows that though there is a mention about the adverse cases and ground case in the impugned order of detention, particularly Page No.24 of the booklet, there is no proof to show that the arrest of detenu has been intimated to the family members, relatives or friends as mandated by the Constitution. It is also to be remembered that in order to meet fairness, justness and reasonableness, after a person is taken into custody in pursuance of an order of detention, the members of his household, preferably the parent, the child or the spouse, must be informed in writing of the passing of the order of detention and of the fact that the detenu has been taken into custody, by duly intimating as to the place of detention, including the place where the detenu is transferred from time to time, which would ensure the right of the person arrested under preventive detention. If such intimation of arrest has not been made effectively, then, it would confer a right upon the arrestee to impugn the arrest effected on him.

6. In the case on hand, there is no proof to exhibit such intimation of arrest to the family members of the detenu. Thus, on account of the failure of the detaining authority in communicating the arrest of detenu to



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H.C.P.No.1274 of 2022

the family members, the detention order would be vitiated on the ground of deprivation of right guaranteed under Article 22(1) of the Constitution of India. Thus, for the reasons stated herein-above, the impugned detention order cannot be sustained.

In the result, the Habeas Corpus Petition is allowed and the order of detention in B.C.D.F.G.I.S.S.V.No.25/2022 dated 31.05.2022, passed by the second respondent is set aside. The detenu viz., Edwinraj, S/o.Louis Amirtaraj, aged 24 years, is directed to be released forthwith, unless his detention is required in connection with any other case.

J.]

nsd

[P.N.P. J.]

[N.A.V.,

04.01.2023

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6. Adverting to aforementioned earlier order made by Honourable Predecessor Bench in the case of Edwinraj, who was clamped with a similar preventive detention order, learned counsel submits that the same point is available to the detenu in the case on hand also and the page number is 20 in this case. To be noted, in Edwinraj's case, it is page no. 24 of that booklet.

7. Learned State Additional Public Prosecutor does not have much of a say as the argument is predicated on records. We remind ourselves of the age old adage 'Sauce to Goose is sauce to Gander too'. Therefore, applying the order dated 04.01.2023 in H.C.P. No.1274 of 2022 passed by the Honourable Predecessor Bench, we have no hesitation in saying that the impugned detention order in the captioned HCP also deserves to be dislodged.

8. Apropos, the sequitur is, captioned HCP is allowed. Impugned detention order dated 12.05.2022 bearing reference BCDFGISSSV No.17/2022 made by the second respondent is set aside and the detenu Thiru.Ayyar, male, aged 55 years, son of Thiru.Subbaiya is directed to be set at liberty forthwith, if not required in connection with



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any other case / cases. There shall be no order as to costs.

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(M.S.,J.) (M.N.K.,J.)
17.04.2023

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 II, Puzhal, Chennai.

To

- 1.The Secretary,
Home, Prohibition and Excise Department,
Fort St.George, Chennai - 9.
- 2.The District Magistrate and District Collector
of Tiruvallur District, Tiruvallur District.
- 3.The Superintendent of Police,
Tiruvallur, Tiruvallur District.
- 4.The Superintendent of Prison,
Central Prison, Puzhal, Chennai – 66.
- 5.The Inspector of Police,
Kavarapettai Police Station,
Gummidipoondi Circle,
Tiruvallur District.
- 6.The Public Prosecutor,
High Court, Madras.

M.SUNDAR, J.,

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

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