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H.C.P.No.2604 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.06.2023

Coram

THE HONOURABLE MR.JUSTICE **M.SUNDAR**
and
THE HONOURABLE MR.JUSTICE **R.SAKTHIVEL**

H.C.P.No.2604 of 2022

R.Janaki

.. Petitioner

vs

1.State of Tamil Nadu rep. By
Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George, Chennai – 9.

2.The Commissioner of Police,
Office of the Commissioner,
Veppery, Chennai – 7.

3.The Superintendent of Prison,
Central Prison, Puzhal, Chennai – 66.

4.The Inspector of Police,
J-7 Velachery Police Station,
Velachery, Chennai.

.. 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 detention order passed in Memo
No.439/BCDFGISSSV/2022 dated 25.11.2022 on the file of the
second respondent herein and set aside the same and direct the
respondents to produce the detenu i.e., the body of Raja @ Seizing



H.C.P.No.2604 of 2022

Raja, male, aged 49 years, the detenu detained under Act 14 of 1982 in detention order Memo No.439/BCDFGISSSV/2022 dated 25.11.2022, now confined in Central Prison, Puzhal, Chennai before this Court and set him at liberty.

For Petitioner : Mr.R.John Sathyan,
Senior Counsel
for Mr.V.Purushothaman Reddy

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 25.11.2022 bearing reference BCDFGISSSV No.439/2022' [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



H.C.P.No.2604 of 2022

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 constitutes substantial part of substratum of the impugned detention order is Crime No.515 of 2022 on the file of J-7 Velacherry Police Station for the alleged offences under Sections 323, 294(b), 427, 336 and 506(ii) of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] r/w 25(1-A) of Arms Act, 1959. 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.R.John Sathyan, learned senior counsel instructed by Mr.V.Purushothaman Reddy, learned counsel on record for petitioner and Mr.E.Raj Thilak, learned State Additional Public Prosecutor for all respondents are before us.



H.C.P.No.2604 of 2022

5. In the support affidavit qua captioned HCP several grounds have been urged/raised but in the hearing, Mr.R.John Sathyan, learned senior counsel instructed by Mr.V.Purushothaman Reddy, learned counsel on record for petitioner predicated his campaign against the impugned preventive detention order on one point which finds favour with us. To be noted, that one point is non-furnishing of the bail order in the adverse case about which there will be elaboration infra in the paragraphs to follow.

6. Learned senior counsel for petitioner placed before us grounds booklet that was served on the detenu and we had the benefit of perusing the same.

7. Be that as it may, in the case on hand as regards impugned preventive detention the same is predicated on one adverse case and one ground case viz., Crime No.372 of 2022 for alleged offences under Sections 147, 341, 294(b), 506(i) of IPC r/w Section 4 of Tamil Nadu Prohibition of Harassment of Women Act, 2002 and Crime No.515 of 2022 for alleged offences under Sections 323, 294(b), 427, 336 and 506(ii) of IPC r/w 25(1-A) of Arms Act, 1959. The detenu has moved bail application in the adverse case and bail has been granted by the jurisdictional Court. This factum is captured in the grounds of impugned preventive detention order.



H.C.P.No.2604 of 2022

The detenu's relatives are taking steps to move bail in the ground case is the articulation in the impugned preventive detention order.

The point is as regards the bail order in the adverse viz., bail order dated 21.11.2022 in CrI.M.P. No.19175 of 2022 on the file of XVIII Metropolitan Magistrate, Saidapet, Chennai has not been furnished to the detenu in the grounds booklet. We had the benefit of perusing the grounds booklet. As already alluded to supra, neither the bail order in the adverse case in English nor a Tamil translation of the case have been furnished to the detenu. We are informed that the literacy level of the detenu is 9th standard, he is a school drop out and he is conversant with mother tongue Tamil only.

8. We had the benefit of perusing the grounds booklet available with the office of the first respondent which was placed before us by the learned Prosecutor. Aforementioned bail order in the adverse case in English and Tamil translation of the same are available in his booklet at pages 32 to 37 which are missing in the grounds booklet served on the detenu. The impact of this is, the sanctus rights of the detenu to make an effective representation which is a constitutional safeguard ingrained in Clause (5) of Article 22 of the Constitution of India has been impaired. Infraction of sanctus constitutional safeguard ingrained in Article 22(5) of the Constitution of India is a certain ground for dislodging a impugned



H.C.P.No.2604 of 2022

preventive detention order. Sequitur is, impugned preventive detention order deserves to be dislodged.

9. Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 25.11.2022 bearing reference BCDFGISSSV No.439/2022 made by the second respondent is set aside and the detenu Thiru.Raja @ Seizing Raja, aged 49 years, son of Thiru.Narasimhan, 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.) (R.S.V.,J.)
19.06.2023

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, Puzhal, Chennai.

To

- 1.The Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George, Chennai – 9.
- 2.The Commissioner of Police,
Office of the Commissioner,
Veppery, Chennai – 7.
- 3.The Superintendent of Prison,
Central Prison, Puzhal, Chennai – 66.



H.C.P.No.2604 of 2022

4.The Inspector of Police,
J-7 Velachery Police Station,
Velachery, Chennai.

5.The Public Prosecutor,
High Court, Madras.

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



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H.C.P.No.2604 of 2022

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