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HCP No.2624 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.07.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

H.C.P.No.2624 of 2022

Murali
S/o.Narasimalu

.. Petitioner

Vs.

1. The State of Tamil Nadu
Rep. by Principal Secretary to Government
Home, Prohibition & Excise Department
Fort St.George
Chennai-600 009.
2. The District Magistrate and District Collector
Tiruvallur District
Tiruvallur.
3. The Superintendent of Police
Tiruvallur District
Tiruvallur.
4. The Superintendent of Prison
Central Prison, Puzhal
Chennai.
5. The Inspector of Police
D-5, Pallipet Police Station
Tiruvallur District,
Tiruvallur.



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..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 made in No.58/BCDFGISSSV-2022 dated 01.12.2022 on the file of 2nd respondent herein and quash the same as illegal and direct the respondent to produce detenu viz., Sai Ganesh, son of Murali, aged about 23 years, now confined in Central Prison, Puzhal, before this Hon'ble Court and set him at liberty.

For Petitioner : Mr.R.Rajadurai
representing Mr.V.Arunkumar
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 father of the detenu assailing a 'preventive detention order dated 01.12.2022 bearing reference B.C.D.F.G.I.S.S.S.V.No.58/2022' [hereinafter 'impugned preventive 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 the impugned preventive detention order has been made by second respondent.

2. Impugned preventive 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. There is no adverse case. This solitary case which is the sole substratum of the impugned preventive detention order is Crime No.149 of 2022 on the file of Pallipet Police Station for alleged offences under Sections 8(c), 20(b)(ii)(B) of 'the Narcotic Drugs and Psychotropic Substances Act, 1985' [hereinafter 'NDPS Act' for the sake of convenience and clarity] read with Section 328 of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity]. Owing to the nature of the challenge to the impugned preventive detention order, it is not necessary to delve into the factual matrix or be detained further by facts.

4. Mr.R.Rajadurai, learned counsel representing the counsel on record for petitioner and Mr.E.Raj Thilak, learned State Additional Public Prosecutor for all respondents are before us.



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5. In the support affidavit filed in support of captioned HCP, several points have been raised / urged but in the final hearing, Mr.R.Rajadurai, learned counsel representing the counsel on record for petitioner posited his argument on one point and that one point is the Arrest Intimation Form (page No.15) of the grounds booklet does not contain signature of the witness. Elaborating on this point, learned counsel drew our attention to page No.15 of grounds booklet and submitted that arrest intimation was not communicated to the detenu's father as mentioned in the Arrest Intimation Form and this is buttressed by the witness signature column being left blank in Arrest Intimation Form. On perusing the grounds booklet, we find that the submission of learned counsel is correct.

6. Learned Prosecutor submitted to the contrary and learned Prosecutor submitted that the arrest intimation has been given by way of a 'Short Messaging Service' [SMS]. We are not entering into this factual dispute arena or the question as to whether the arrest intimation can be given by way of SMS. We are proceeding on the simple point that 'SIGN OF WITNESS' column in Arrest Intimation Form is blank which means the benefit of doubt has to be given to the detenu. If the benefit of doubt is given



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to the detenu as we are concerned with Arrest Intimation Form in the ground case which is the sole substratum of the impugned prevention detention order, we have no hesitation in saying that the rights of the detenu to make an effective representation which is a constitutional guarantee ingrained in Clause 5 of Article 22 of the Constitution of India has been impaired. In this regard, we also remind ourselves of Section 41-B(b)(i) of 'The Code of Criminal Procedure, 1973 (2 of 1974)' [hereinafter 'Cr.PC' for the sake of brevity and clarity] which makes it mandatory that memorandum of arrest should be attested by atleast one witness. To be noted, Section 41-B(b)(i) of Cr.PC reads as follows:

'41-B. Procedure of arrest and duties of officer making arrest.- Every police officer while making an arrest shall -

(a)

(b)

(i) attested by at least one witness, who is a member of the family of the person arrested or a respectable member of the locality where the arrest is made;'

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



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7. Before concluding, we also remind ourselves that preventive detention is not a punishment and HCP is a high prerogative writ.

8. Apropos, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 01.12.2022 bearing reference B.C.D.F.G.I.S.S.S.V.No.58/2022 made by the second respondent is set aside and the detenu Thiru.Sai Ganesh, male, aged 23 years, son of Thiru.Murali, 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.)
04.07.2023

Index : Yes
Speaking
Neutral Citation : Yes

mk

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



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6. The Public Prosecutor
High Court, Madras.



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

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