



H.C.P(MD)No.644 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.10.2023

Coram

THE HON'BLE MR.JUSTICE **M.SUNDAR**
and
THE HON'BLE MR. JUSTICE **R.SAKTHIVEL**

H.C.P(MD)No.644 of 2023

K.Saranya,
W/o.Karthick @ Selva Karthick,
1152, New Agraharam,
Kalyanapuram,
Thiruvaiyaru Taluk,
Thanjavur District.

.. Petitioner

VS

1.State of Tamil Nadu,
Represented by its,
The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai – 600 009.

2.The District Collector and District Magistrate,
Trichy District,
Trichy.

3.The Superintendent of Police,
Central Prison,
Trichy.

.. Respondents

Prayer:- Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Habeas Corpus calling for the entire records in detention order in Cr.M.P.No.06/2023 dated 08.04.2023 passed by the second



H.C.P(MD)No.644 of 2023

respondent herein and set aside the same as illegal and direct the respondents to produce the body or person of petitioner's husband namely Karthick @ Selva Karthick, male aged 36 years, son of Kalyanasundaram (now detained at Central Prison, Trichy) before this Court and set him at liberty.

For Petitioner : Mr.G.Karuppasamy Pandiyan

For Respondents : Mr.A.Thiruvadi Kumar
Additional Public Prosecutor

ORDER

[Order of the Court was made by R.SAKTHIVEL, J.]

This 'Habeas Corpus Petition' [hereinafter 'HCP' for sake of brevity] has been filed by wife of the detenu assailing a 'preventive detention order dated 08.04.2023 bearing reference Cr.M.P.No.06/2023' [hereinafter 'impugned preventive detention order' for the sake of brevity and convenience]. To be noted, second respondent is the detaining authority as impugned preventive detention order has been made by second respondent. To be noted, sponsoring authority has not been arrayed as a respondent but we find that Station House Officer of Thiruverumbur Police Station is the sponsoring authority [hereinafter 'Sponsoring Authority' for the sake of convenience and clarity].



H.C.P(MD)No.644 of 2023

2. Impugned preventive 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 are five adverse cases and one ground case. The ground case which constitutes substantial part of substratum of the impugned preventive detention order is Crime No.28 of 2023 on the file of Thiruverumbur Police Station for alleged offences under Sections 454, 457 and 380 of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity]. Considering the nature of the challenge to the impugned detention order, it is not necessary to delve into the factual matrix of the case.

4. Mr.G.Karuppasamy Pandian, learned counsel on record for petitioner and Mr.A.Thiruvadi Kumar, learned State Additional Public Prosecutor for all respondents are before us.



H.C.P(MD)No.644 of 2023

WEB COPY

5. Petitioner filed an affidavit in support of her petition wherein she raised many points against the impugned preventive detention order, but today, during final hearing, learned counsel for petitioner has raised a point against impugned preventive detention order that the detaining authority has relied on the similar case bail order in Crime No.787 of 2014 passed in Cr.M.P.No.2827 of 2015, dated 26.05.2015, on the file of learned Judicial Magistrate No.III, Tiruchirappalli. The aforesaid bail petition has not been furnished to the detenu. The petitioner sent a representation to the second respondent through registered post on 04.05.2023 requesting to furnish the copy of the similar case bail petition. Despite the representation sent by the petitioner to the second respondent, the second respondent did not furnish the copy of the bail petition. Since the detaining authority did not furnish the copy of the bail petition, detenu's right to make an effective representation has been affected. Right to make an effective representation against the impugned preventive detention order is a constitutional right enshrined under Article 22(5) of the Constitution of India. Accordingly, learned counsel for petitioner has prayed to set aside the impugned preventive detention order.

6. Per contra, learned Additional Public Prosecutor has submitted that similar case bail order has been furnished to the petitioner wherein all



H.C.P(MD)No.644 of 2023

the averments made in the bail petition has been captured. Further, he submitted that detaining authority has passed the impugned preventive detention order after considering all the materials furnished to him by the sponsoring authority. Accordingly, he has prayed to dismiss the Habeas Corpus Petition.

7.We have considered both the submissions.

8.In para (5) of the grounds of the impugned preventive detention order, the detaining authority has relied on the similar case bail order registered at Srirangam Police Station in Crime No.787 of 2014 passed by learned Judicial Magistrate No.III, Tiruchirappalli in Cr.M.P.No.2827 of 2015, dated 26.05.2015. The petitioner has sent a representation through registered post on 04.05.2023 requesting the detaining authority to furnish the aforesaid bail petition. Despite the request, detaining authority did not furnish the copy of the bail petition which infringe the detenue's right to make an effective representation to the impugned preventive detention order. Right to make an effective representation against the impugned preventive detention order is a constitutional safe guard enshrined under Article 22(5) of the Constitution of India. Hence, we are inclined to interfere with the impugned preventive detention order.



H.C.P(MD)No.644 of 2023

WEB COPY

9. In the result, the captioned HCP is allowed. Impugned preventive detention order dated 08.04.2023 bearing reference Cr.M.P.No.06/2023 made by the second respondent is set aside and the detenu Karthick @ Selva Karthick, male aged 36 years, son of Kalyanasundaram, 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.)

03.10.2023

Index : Yes/No

Neutral Citation : Yes/No

ps

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



H.C.P(MD)No.644 of 2023

WEB COPY

To

- 1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai – 600 009.
- 2.The District Collector and District Magistrate,
Trichy District,
Trichy.
- 3.The Superintendent of Police,
Central Prison,
Trichy.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



H.C.P(MD)No.644 of 2023

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

ps

H.C.P(MD)No.644 of 2023

03.10.2023