



HCP(MD)No.733 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.10.2023

CORAM :

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

HCP(MD)No.733 of 2023

Kanniyammal

... Petitioner

vs.

1. The Principal Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 600 009.

2. The Commissioner of Police,
Tiruchirapalli City,
Tiruchirapalli.

3. The Superintendent of Prison,
Central Prison,
Tiruchirapalli.

... 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 impugned detention order passed by the 2nd respondent made in his proceedings in C.No.33/Detention/C.P.O/T.C/2023 dated 02.05.2023 in detaining the detenu under section 2(f) of the Tamilnadu Act 14 of 1982 as a Immoral Traffic Offender and quash the same and direct the respondents to produce the detenu Rethinavel S/o.Palanisamy, Male, aged about 20 years, who is detained at Central Prison, Tiruchirappalli, before this Court and set him at liberty.



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For Petitioner : Mr.K.M.Karunakaran
For Respondents : Mr.A.Thiruvadi Kumar
Additional Public Prosecutor

ORDER

[Order of the Court was made by **M.SUNDAR, J.**]

Captioned 'Habeas Corpus Petition' [hereinafter 'HCP' for the sake of convenience and clarity] has been filed by the grandmother of the detenu assailing the 'preventive detention order dated 02.05.2023 bearing reference C.No.33/Detention/C.P.O/T.C/2023' [hereinafter 'impugned preventive detention order' for the sake of brevity and convenience]. To be noted, sponsoring authority has not been arrayed as a respondent and we find that Station House Officer of Ariyamangalam Police Station is the sponsoring authority [hereinafter 'sponsoring authority' for convenience and brevity] and second respondent is the detaining authority as impugned preventive detention order has been made by second respondent.

2. Captioned HCP was listed for admission on 23.06.2023 and a coordinate Hon'ble predecessor Bench made the following order and a scanned reproduction of the same is as follows:



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**R.SURESH KUMAR, J.
AND
K.K.RAMAKRISHNAN, J.**

Admit.

Mr. A.Thiruvadi kumar
learned Additional Public Prosecutor
takes notice for the respondents and
seeks time for filing counter.

Post the matter after.....Six
weeks.

 
[R.S.K., J.] & [K.K.R.K., J.]
23.06 .2023

myr.

3. Impugned preventive detention order has been made branding the detenu as 'Goonda' within the meaning of Section 2(f) of '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].

4. Mr.K.M.Karunakaran learned counsel on record for petitioner and Mr.A.Thiruvadi Kumar, learned State Additional Public Prosecutor for all respondents are before us.

5. In the support affidavit *qua* captioned HCP, multiple points have been raised but Mr.K.M.Karunakaran, learned counsel for HCP petitioner in the final hearing board today drew our attention to page 97 of the grounds booklet served on the detenu. Page 97 of the grounds booklet is a copy of accident register. It is the case of HCP petitioner's counsel that this page is not readable. We had the benefit of perusing the grounds booklet served on the detenu and we have no reason to disagree with the learned counsel for the petitioner. Learned counsel also drew our attention to a representation dated 16.06.2023 sent by the HCP petitioner [on behalf of the detenu] *qua* impugned preventive detention order, wherein, a specific request has been made for clean copy *inter alia* of page 97 saying that the same is not readable. Relevant part of the representation is paragraph 6 and the same reads as follows:



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“மேலும் புத்தகத்தில் 96 மற்றும் 97
ஆகிய பக்கங்கள் படிக்கும் நிலையில் இல்லை.
எனவே படிக்கும் நிலையில் உள்ள நகல்கள்
தர வேண்டுகிறேன்.□

6. The aforementioned point turns heavily on the records and the case file before this Court and therefore, learned Prosecutor merely does not have much of a say.

7. In the aforesaid backdrop, we find that there is no disputation or contestation that a clean readable copy of the aforementioned accident register has not been furnished to the detenu in spite of specific request.

8. The narrative thus far brings to light that the sanctus right of the detenu to make an effective representation *qua* the impugned preventive detention order has been impaired. This Court has repeatedly noticed that such sanctus right of the detenu *qua* a preventive detention order is a constitutional safeguard ingrained in Clause (5) of Article 22 and this Court has also repeatedly held that infraction of Article 22(5) of the Constitution vitiates a impugned preventive detention order and



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renders it liable for being dislodged in a habeas legal drill.

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9. In the light of the narrative, discussion and dispositive reasoning, thus far, it is clear that the case on hand is one such case.

10. Ergo, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 02.05.2023 bearing reference C.No. 33/Detention/C.P.O/T.C/2023 made by the second respondent is set aside and the detenu Thiru.Rethinavel, aged about 20 years, son of Thiru.Palanisamy 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.)
16.10.2023

Index : Yes
Neutral Citation : Yes
bala

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

To

1. The Principal Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai - 600 009.

2. The Commissioner of Police,



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Tiruchirapalli City,
Tiruchirapalli.

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3. The Superintendent of Prison,
Central Prison,
Tiruchirapalli.

4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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

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ORDER MADE IN
HCP(MD)No.733 of 2023
DATED : 16.10.2023