



HCP(MD)No.1373 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.12.2023

CORAM :

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

HCP(MD)No.1373 of 2023

Valliyammal

... Petitioner
mother of the detenu

vs.

1. The Principal Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George,
Secretariat, Chennai – 600 009.
2. The Deputy Inspector General of Police and
Commissioner of Police,
(Tirunelveli Range)
O/o.Commissioner of Police, Tirunelveli City.
3. The Inspector of Police,
Palayamkottai Police Station,
Tirunelveli City.
(Crime No.1034/2023)
- 4.The Superintendent of Prison,
Central Prison, Palayamkottai,
Tirunelveli City.

... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Habeas Corpus, calling for the records connected with the detention order passed in No.50/BCDFGISSSV/2023 dated 27.09.2023 on the file of the 2nd respondent herein and quash the



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same and direct the respondents to produce the detenu or body of the detenu namely Jeeva alias Mariselvam, aged about 25 years, S/o. Murugan, now detained as 'GOONDA' at Central Prison, Palayamkottai before this Court and set him at liberty forthwith.

For Petitioner : Mr.A.Mohamed Hashim

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

ORDER

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

1. This Habeas Corpus Petition [henceforth referred to as 'HCP' for the sake of brevity] has been presented in this Court on 06.11.2023 by mother of the detenu praying to quash 'the detention order dated 27.09.2023' [henceforth referred to as 'impugned order' for the sake of brevity] passed by 'second respondent' [henceforth referred to as 'detaining authority' for the sake of clarity and convenience] bearing reference No.50/BCDFGISSSV/2023.

2. When the matter came up before this Court 'FOR ADMISSION' on 10.11.2023, learned counsel for HCP petitioner raised a point that respondents have not furnished the booklet containing all the



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supporting documents within 5 days as stipulated under Section 8(1) 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)' [henceforth referred to as 'Act 14 of 1982' for the sake of brevity, clarity and convenience]. This Court deems fit and necessary to reproduce the Admission Board order dated 10.11.2023 hereunder:



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

ORDER

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

Captioned Habeas Corpus Petition has been filed in this Court on 06.11.2023 *inter alia* assailing a 'detention order dated 27.09.2023, bearing reference No.50/BCDFGISSSV/2023' [hereinafter 'impugned preventive detention order' for the sake of convenience, clarity and brevity] made by 'second respondent' [hereinafter 'Detaining Authority' for the sake of convenience]. To be noted, third respondent is the Sponsoring Authority.

2.To be noted, the mother of the detenu is the petitioner.

3.Mr.N.Mohideen Basha, learned counsel on record for petitioner is before us. Learned counsel for petitioner submits that ground case *quæ* the detenu is Crime No.1034 of 2023 on the file of Palayamkottail Police Station registered under Sections 147, 148, 302, 506(ii) and 109 of 'the Indian Penal Code, 1860 (Act 45 of 1860)' [hereinafter 'IPC' for the sake of brevity] and altered into Sections 147, 148, 302, 506(ii), 109 of IPC r/w Sections 3(1)(r),

<https://www.mhc.tn.gov.in/judis>
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3(1)(s), 3(2)(v) of 'the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (Act No.33 of 1989)' [hereinafter 'SC & ST (PoA) Act' for the sake of brevity and convenience].

4.The aforementioned impugned preventive detention order has been made on the premise that the detenu is a 'Goonda' under 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].

5.The impugned preventive detention order has been assailed *inter alia* on the ground that the respondents have not furnished the booklet containing all the supporting documents within 5 days as stipulated under Section 8(1) of Act 14 of 1982, despite repeated requests.

6.*Prima facie* case made out for admission. Admit. Issue *Rule nisi* returnable by four [4] weeks.

<https://www.mhc.tn.gov.in/judis>

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7.Mr.A.Thiruvadi Kumar, learned State Additional Public Prosecutor accepts notice for all respondents. List the captioned Habeas Corpus Petition accordingly.

[M.S.J.,] & [R.S.V.J.,]

10.11.2023

VSM



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3. Today, in the final hearing Board, learned counsel for HCP petitioner elaborated his argument and submitted that the detaining authority has passed the impugned order on 27.09.2023; that the detenu has been arrested on 28.09.2023 in pursuance of the impugned order and that the grounds booklet has been served upon the detenu only on 13.10.2023. Further, learned counsel for HCP petitioner drew attention of this Court to Section 8 of Act 14 of 1982 which reads as follows:

'8. (1) When a person is detained in pursuance of a detention order, the authority making the order shall, as soon as may be, but not later than five days from the date of detention, communicate to him the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order to the State Government.

(2) Nothing in sub-section (1) shall require the authority to disclose facts which it considers to be against the public interest to disclose.' (emphasis supplied)

4. Learned counsel for HCP petitioner further submitted that non-furnishing of copies of the documents relied on by the detaining authority is an infraction against the detenu preventing him from making effective representation against the impugned order. He relied on



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Vasanthi's case [*Vasanthi Vs. The Additional Cheif Secretary to Government and others* reported in **2023:MHC:4028** (Neutral Citation of this Court i.e., Madras High Court)]. Accordingly, learned counsel for HCP petitioner prayed to allow this petition.

5. The learned Additional Public Prosecutor for the respondents submitted that copies of relevant and relied-upon material documents pertaining to the case mentioned in the grounds of detention including the similar case in the form of booklet in two volumes were sent to the Central Prison, Palayamkottai on 30.09.2023 and served to the detenu by the prison authorities.

6. This Court has perused the case file. In the support affidavit the petitioner has specifically stated that the respondents did not serve the booklet till 11.10.2023; that hence, she sent the representation dated 11.10.2023 to the respondents; that only on receipt of the said representation, the fourth respondent served two volumes of booklet on 13.10.2023 to the detenu. Further, in this regard, she has annexed supporting documents including the copy of the representation dated 11.10.2023.



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7. It is to be noted that the question as to whether the date of communication / service of the preventive detention order upon the detenu has to be included or excluded, is being considered by this Court in a batch of cases.

8. Be that as it may, in the case on hand, the impugned order is dated 27.09.2023. The impugned order has been served upon the detenu on 28.09.2023. This means that the detention of the detenu pursuant to the impugned order is on 28.09.2023. As per Section 8(1) of Act 14 of 1982, '5 days' should be computed from the date on which the preventive detention order is served on the detenu. Therefore, in the case on hand, '5 days' have to be computed from 29.09.2023 and the grounds booklet ought to have been served on or before 03.10.2023. But, the grounds booklet has been served upon the detenu on 13.10.2023 which is beyond the period of 5 days as stipulated under Section 8(1) of Act 14 of 1982. A scanned reproduction of the endorsement made by the Superintendent, District Jail, Perurani, Thoothukudi on the grounds booklet reads thus:

உயர் நீதிமன்ற மதுரை
சென்னைக் கோர்ட்டுமேட்டில்
தலைவர் கமிஷனரின்
பிர. சமீபம்
பிரதேசம்
Case 13/16/23, Page 12 of 20
Read over and explained to the
Detenu by the
Jailer / Adult Superintendent of Prison
Central Prison
சென்னைக் கோர்ட்டுமேட்டில்
மதுரை, தலைவர்
பிரதேசம், சென்னை



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9. From the above endorsement, it is clear that the grounds booklet has not been served upon the detenu within the period of 5 days from the date of detention. Since record shows otherwise, this Court does not accept the submission of the learned Additional Public Prosecutor that copies of relied upon documents were sent to Central Prison, Palayamkottai on 30.09.2023 and served to the detenu by the prison authorities.

10. Notably, the provision of Section 8(1) of Act 14 of 1982 is a mandatory provision. The object / purpose lying beneath Section 8(1) of Act 14 of 1982 is to afford an earliest opportunity to the detenu for making an effective representation against the detention order to the Authorities / Government. Merely furnishing the grounds of detention without providing copies of the documents relied upon by the detaining authority fails to fulfil the purpose of enabling the detenu to make an effective representation, at the earliest opportunity, against the detention order as enshrined under Article 22(5) of the Constitution of India. The supply of grounds of detention, as outlined in Section 8(1) of Act 14 of 1982, inherently includes the provision of copies of the relied upon documents. This aspect is further supported by the fact that the abstract



order of detention could not have been issued before formulating the grounds of detention formulated based on such documents.

11. This Court in *M.Shylaja's* case [*M.Shylaja Vs. The Additional Chief Secretary to Government and others* reported in *2023/MHC/193* (Neutral Citation of this Court i.e., Madras High Court)] after drawing inspiration from the ratio in *Malleeswari's* case [*Malleeswari Vs. State Government, rep. by the Secretary to Government and another*, reported in *(2011) 1 MLJ (Crl.) 513*] has held thus:

“9. In this regard, we draw inspiration from ratio in Malleeswari Vs. State Government, rep. By the Secretary to Government and another reported in (2011) 1 MLJ (Crl) 513, wherein a Hon'ble Division Bench of this Court has held that delay in supplying copy of detention order, grounds and connected papers to the detenu i.e., delay beyond 5 days from the date of detention is clearly violation of Section 8(1) of Act 14 and that by itself becomes a ground to make an order setting aside the detention. To be noted, in Malleeswari case also, the detention was under Act 14 albeit as a 'Goonda' and detenu was in prison.

10. ...



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11. *With regard to custodial jurisprudence, in **Pattammal Vs. District Magistrate and Collector Nagai and Others** reported in 1995 (1) CTC 335, which is also under Act 14 of 1982, a Hon'ble Division Bench of this Court dealing with detention under Act 14 has held that Section 8 of Act 14 of 1982 is intended to confer a right for detenu qua an opportunity to make a representation against an order of detention.*

12. *We have noticed that the language in which Section 8 of Act 14 of 1982 is couched makes it clear that 'not later than five days' is from the date of detention. In the cases on hand, the detenues were already under detention. This is one facet of the matter. Another facet of the matter is, on detention orders being made, preventive detention of the detenus operates and in the cases on hand, the grounds of detention have been served beyond five days from the date of detention orders. ...”*

12. It is to be noted that **M.Shylaja's** case referred to *supra* has been subsequently followed by this Court in **Vasanthi's** case referred to *supra*. Paragraphs 9 & 9.1 of **Vasanthi's** case read thus:



“9. We carefully considered the rival submissions. We also perused the case file before us besides the records which were placed before us. This Bench is convinced that the impugned preventive detention orders have been vitiated owing to violation of Section 8(1) of Act 14 of 1982 and both the impugned preventive orders deserve to be dislodged i.e., interfered with and set aside. The discussion, dispositive reasoning i.e., reasons are as follows:

9.1 This Court in *M.Shylaja Vs. The Additional Chief Secretary to Government and others* reported in 2023/MHC/193 (Neutral Citation) (SCC Online equivalent is 2023 SCC OnLine 289) held that violation of Section 8(1) of Act 14 of 1982 vitiates a preventive detention order and renders it liable for being set aside as violation of Section 8(1) of Act 14 of 1982 impairs the right of a detenu to make an effective representation against the preventive detention order as effective representation includes quick representation as detenu is incarcerated and it is a matter of sanctus liberty ingrained in Article 21 of the Constitution. This was posited on the logic that a right of the detenu to make an effective representation against a preventive detention order is a constitutional safeguard ingrained in Article 22(5) of the Constitution of India. This Shylaja principle continues



to hold the field. Therefore, violation of Section 8(1) of Act 14 of 1982 would result in dislodgement of preventive detention order.”

13. In accordance with the above narrative, this HCP is allowed and the impugned order passed by the second respondent dated 27.09.2023 bearing reference No.50/BCDFGISSSV/2023 is quashed and the detenu Thiru.Jeeva alias Mariselvam, aged about 25 years, son of Thiru.Murugan 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.)
11.12.2023

Index : Yes
Neutral Citation : Yes
PKN / JEN

P.S: Registry to forthwith communicate this order to Jail authorities in Central Prison, Palayamkottai. All concerned to act on this order being uploaded in official website of this Court without insisting on certified copies. To be noted, this order when uploaded in official website of this Court will be watermarked and will also have a QR code.



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1. The Principal Secretary to Government,
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2. The Deputy Inspector General of Police and
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(Tirunelveli Range)
O/o.Commissioner of Police,
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3. The Inspector of Police,
Palayamkottai Police Station,
Tirunelveli City.
- 4.The Superintendent of Prison,
Central Prison, Palayamkottai,
Tirunelveli City.
5. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
6. The Joint Secretary to Government,
Public (Law and Order) Department,
Secretariat, Chennai.



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

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ORDER MADE IN
HCP(MD)No.1373 of 2023

DATED : 11.12.2023