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H.C.P.No.12 of 2023

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.12 of 2023

Hemaltha
Wife of Dheepan

.. Petitioner /
wife of the detenu

Vs.

1. State rep. By its
The Secretary, to Government of Tamil Nadu
Prohibition & Excise Department (Home)
Secretariat, Fort St.George
Chennai – 600 009

2. The Commissioner of Police
Commissioner Office – Avadi City
Avadi, Chennai

3. The Superintendent of Prison
Central Prison
Puzhal, Chennai

4. The Inspector of Police
E-5, Sholavaram Police Station
Avadi City
Chennai

... Respondents

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Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus to call for the entire records relating to the petitioner's grandson detention under Tamil Nadu Act 14 of 1982 vide detention order dated 30.11.2022 on the file of 2nd respondent herein and made in proceedings in Memo No.164/BCDFGISSSV/2022 and quash the same as illegal and consequently direct the respondents herein to produce the petitioner's husband namely Dheepan, son of Arumugam, aged about 41 years before this Court and set him at liberty.

For Petitioner : Mr.P.Prince Premkumar
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 the wife of the detenu assailing a 'impugned preventive detention order dated 30.11.2022 bearing reference 164/BCDFGISSSV/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.



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2. Impugned 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 is one adverse case and one ground case. The ground case which constitutes substantial part of substratum of the impugned preventive detention order is Crime No.897 of 2022 on the file of E-5, Sholavaram Police Station for alleged offences under Sections 147, 148, 341, 294(b), 336, 427, 392, 397, 506(ii) of 'Indian Penal Code, 1860 (Act 45 of 1860)' ['IPC' for brevity] altered to 147, 148, 341, 294(b), 363, 506(ii), 302 and 120(B) IPC. 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.



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4. Mr.P. Prince Premkumar, learned counsel on record for petitioner and Mr.E.Raj Thilak, learned State Additional Public Prosecutor for all respondents are before us.

5. In the support affidavit qua captioned HCP several points have been raised/urged but in the final hearing Mr.P. Prince Premkumar, learned counsel for petitioner predicated his campaign against the impugned preventive detention order on one point which turns on subjective satisfaction arrived at by the Detaining Authority qua imminent possibility of the detenu being enlarged on bail. Learned counsel submitted that such subjective satisfaction has been arrived at by the Detaining Authority by relying on Balaji's case bail order being bail order dated 26.05.2021 in Crime No.59 of 2021 on the file of R-3 Ashok Nagar Police Station. A careful perusal of Balaji's case bail order, more particularly paragraph 5 thereat brings to light that the then prevailing Covid-19 situation had weighed in the minds of the learned Sessions Judge in granting bail. Relevant paragraph is paragraph 5 and the same reads as follows:

'5.....Considering the duration of custody and stage of the case and existing Covid-19 situation, this Court is inclined to grant bail to the petitioners subject to condition.'



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6. Covid - 19 situation in legal parlance is from 15.03.2020 to 28.02.2022 vide orders of Hon'ble Supreme Court in *Suo Motu* Writ Petition (C) No.3 of 2020 wherein limitation across the Board was extended and therefore, Balaji's case would not apply to the case on hand as the impugned preventive detention order has been made on 30.11.2022.

7. The second point that weighs with us is, Tamil translation of Balaji's case bail order is not provided to the detenu. We had the benefit of perusing the grounds booklet served on the detenu. To be noted, the literacy level of the detenu is 7th Standard and he is a school drop out and therefore, Tamil translation of similar case bail order in the language with which the detenu is conversant is extremely critical.

8. We remind ourselves of Powanammal case i.e., **Powanammal Vs. State of Tamil Nadu**, wherein Hon'ble Supreme Court addressed itself to this translation point in a similar fact situation. The question which the Hon'ble Supreme Court addressed itself to is captured in paragraph 6 and the manner in which a Hon'ble Bench of the Supreme Court answered this

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question is captured in paragraph 16. To be noted, Powanammal case is reported in **(1999) 2 SCC 413** and paragraphs 6 and 16 {as in SCC journal} read as follows:

'6. The short question that falls for our consideration is whether failure to supply the Tamil version of the order of remand passed in English, a language not known to the detenue, would vitiate her further detention.

16. For the above reasons, in our view, the non-supply of the Tamil version of the English document, on the facts and in the circumstances, renders her continued detention illegal. We, therefore, direct that the detenue be set free forthwith unless she is required to be detained in any other case. The appeal is accordingly allowed. '

9. In the case on hand, we find that similar case bail order which has been relied on as part of the grounds of detention qua impugned preventive detention order is a crucial document and not furnishing translation of the same in Tamil, the lone language known to the detenu has impaired his constitutional right to make an effective representation qua the impugned preventive detention order. We therefore have no hesitation in



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saying that the impugned detention order deserves to be dislodged.

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10. Ergo, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 30.11.2022 bearing reference 164/BCDFGISSSV /2022 made by the second respondent is set aside and the detenu Thiru.Dheepan, aged 41, son of Thiru.Arumugam, 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

Speaking order

Neutral Citation : Yes

gpa

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



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To
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1. The Secretary, to Government of Tamil Nadu
Prohibition & Excise Department (Home)
Secretariat, Fort St.George
Chennai – 600 009
2. The Commissioner of Police
Commissioner Office – Avadi City
Avadi, Chennai
3. The Superintendent of Prison
Central Prison
Puzhal, Chennai
4. The Inspector of Police
E-5, Sholavaram Police Station
Avadi City
Chennai
5. The Public Prosecutor
Madras High Court, Chennai



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

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