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HCP No.54 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.06.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

and

THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

H.C.P.No.54 of 2023

Rani

W/o.Lasar

.. Petitioner

Vs.

1. State of Tamil Nadu
Represented by its Secretary
Prohibition and Excise Department
Fort St.George
Chennai-600 009.
2. The District Collector and
District Magistrate
Tiruvannamalai District.
3. The Superintendent of Police
Tiruvannamalai District.
4. The Superintendent of Police
Central Prison
Vellore District.
5. The Inspector of Police
Kannamangalam Police Station
Tiruvannamalai District.

..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 records of the detention order vide D.O.No.107/2022/C2 dated 23.11.2022 on the file of 2nd respondent and quash the same and produce the petitioner's husband Lasar, son of Kulan, age 45 years, confined at Central Prison, Vellore before this Hon'ble Court and set him at liberty.

For Petitioner : Mr.V.Janardhanan
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 wife of the detenu assailing a 'preventive detention order dated 23.11.2022 bearing reference D.O.No.107/2022-C2' [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 'Bootlegger' within the meaning of Section 2(b) of Act 14 of 1982.

3. There are three adverse cases and one ground case. The ground case which constitutes substantial part of substratum of the impugned preventive detention order is Crime No.422 of 2022 on the file of Kannamangalam Police Station for alleged offences under Sections 4(1)(aaa) read with 4(1-A)(ii) of 'the Tamil Nadu Prohibition Act, 1937' [hereinafter 'TNP Act' 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.V.Janardhanan, learned 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. Though very many grounds have been raised in the support affidavit, learned counsel for petitioner at the hearing projected his argument qua challenge to the impugned preventive detention order on one point and that point is not providing translated copy of documents (relied on by the detaining authority) in a language which the detenu is conversant with. Elaborating on the submission, learned counsel drew our attention to page Nos.52, 53, 54 and 55 of the booklet which are form of order for the detention in custody of an accused person dated 14.10.2022, remand order dated 14.10.2022 and remand extension order dated 28.10.2022. No Tamil translation of these documents have been furnished to the detenu. We had the benefit of perusing the booklet. We also noticed that form of order for the detention in custody of an accused person dated 14.10.2022, remand order dated 14.10.2022 and remand extension order dated 28.10.2022 form part of the ground on which the impugned preventive detention order has been made. As this turns on obtaining scenario which comes to light from the booklet which is before us, learned State Additional Public Prosecutor does not have much of a say.



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6. Be that as it may, we are informed that the literacy level of the detenu is 5th standard in school and he is a school drop out. We are also informed that the detenu is conversant only with Tamil. 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 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. '



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7. We find that the aforementioned **Powanammal** case applies in all fours to the case on hand as we find that form of order for the detention in custody of an accused person dated 14.10.2022, remand order dated 14.10.2022 and remand extension order dated 28.10.2022 which have been relied on as part of the grounds of detention qua impugned preventive detention order are crucial documents and not furnishing the same in Tamil the lone language known to the detenu has impaired his constitutional right to make an effective representation of the impugned preventive detention order. We therefore have no hesitation in saying that the impugned preventive detention order deserves to be dislodged.

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

9. Apropos, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 23.11.2022 bearing reference D.O.No.107/2022-C2 made by the second respondent is set aside and the detenu Thiru.Lasar, male, aged 43 years, son of Thiru.Kullan, is directed to



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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.)
28.06.2023

Index : Yes
Speaking
Neutral Citation : Yes

mk

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

To

1. State of Tamil Nadu
Represented by its Secretary
Prohibition and Excise Department
Fort St.George
Chennai-600 009.
2. The District Collector and
District Magistrate
Tiruvannamalai District.
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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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