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HCP No.43 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.07.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

H.C.P.No.43 of 2023

Ramya
D/o.Harikrishnan

.. Petitioner

Vs.

1. The Additional Chief Secretary to
Government of Tamil Nadu
Home, Prohibition and Excise Department
Secretariat, Chennai-600 009.
2. The Commissioner of Police
Greater Chennai Police
Office of the Commissioner of Police
Vepery, Chennai-600 007.
3. The Superintendent
Central Prison
Puzhal, Chennai-600 066.
4. The Inspector of Police
G-5 Secretariat Colony Police Station
Kilpauk, Chennai-10.

..Respondents

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 connected with the detention order passed by the second respondent in Memo No.455/BCDFGISSSV/2022 dated 12.12.2022 and quash the same as illegal



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and direct the respondents to produce the body or person namely, Mr.Abinesh @ Abi, male, aged 23 years, son of Mr.Harikrishnan, residing at No.40/64, Kuttiyappan Street, Pumping Station, Medavakkam, Kilpauk, Chennai-10 now confined at Central Prison, Puzhal, Chennai, before this Hon'ble High Court, Chennai and set him at liberty forthwith.

For Petitioner : Mr.D.Sugumar
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 sister of the detenu assailing a 'preventive detention order dated 12.12.2022 bearing reference No.455/BCDFGISSSV/2022' [hereinafter 'impugned preventive 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 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 offenders, Drug-offenders, Forest-offenders, Goondas, Immoral traffic offenders, Sand-offenders, Sexual-offenders, Slum-grabbers and Video



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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.301 of 2022 on the file of G-5 Secretariat Colony Police Station for alleged offences under Sections 147, 148, 341, 294(b), 336, 427, 397 and 506(ii) of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' 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.D.Sugumar, learned counsel representing the counsel on record for petitioner and Mr.E.Raj Thilak, learned State Additional Public Prosecutor for all respondents are before us.

5. Though very many grounds have been raised in the support affidavit, learned counsel for petitioner at the hearing projected his argument



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qua challenge to the impugned preventive detention order on one point and that point is providing improper translated copy of a document (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 No.4 of the booklet which is FIR (முதல் தகவல் அறிக்கை). Improper Tamil translation of the above document has been furnished to the detenu. We had the benefit of perusing the booklet. On a perusal, it is seen that Section 307 of IPC is missing in Tamil translation of the FIR. We also noticed that FIR forms 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.

6. Be that as it may, we are informed that the literacy level of the detenu is 9th 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. '

7. We find that the aforementioned **Powanammal** case applies in all fours to the case on hand as we find that FIR which has been relied on as part of the grounds of detention qua impugned preventive detention order is a crucial document 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



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order deserves to be dislodged.

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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 12.12.2022 bearing reference No.455/BCDFGISSSV/2022 made by the second respondent is set aside and the detenu Thiru.Abinesh @ Abi, male, aged 23 years, 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.)
04.07.2023

Index : Yes
Speaking
Neutral Citation : Yes

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



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High Court, Madras.



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

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