



WEB COPY



HCP No.85 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.07.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

and

THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

H.C.P.No.85 of 2023

Selvi

W/o.Sasikumar

.. Petitioner

Vs.

1. State of Tamil Nadu
Rep. by its Secretary
Prohibition & Excise Dept.,
Fort St.George, Chennai-600 009.
2. The Commissioner of Police / Detaining Authority
Coimbatore City.
3. Inspector of Police
All Women Police Station
All Women Police Station West
Coimbatore City.
4. The Superintendent of Police
Central Prison, Coimbatore.
..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 relating to the



HCP No.85 of 2023

impugned order of detention passed by the 2nd respondent in C.No.69/GS/IS/2022 dated 11.11.2022 and quash the same and consequently, direct the respondents to produce the detenu C.Sasikumar, aged 57 years, son of Chinnasamy, now confined at Central Prison, Coimbatore, before this Hon'ble Court and set him at liberty forthwith.

For Petitioner : Mr.S.Parthasarathy
For Respondents : Mr.E.Raj Thilak
Additional Public Prosecutor

ORDER

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

When the captioned 'Habeas Corpus Petition' [hereinafter 'HCP' for the sake of convenience and clarity] was listed in the Admission Board on 23.01.2023, this Court made the following order:

'Captioned Habeas Corpus Petition has been filed in this Court on 05.01.2023 inter alia assailing a detention order dated 11.11.2022 bearing reference C.No.69/G/IS/2022 made by 'second respondent' [hereinafter 'Detaining Authority' for the sake of convenience and clarity]. To be noted, third respondent is the Sponsoring Authority.

2. The wife of the detenu is the petitioner.

3. Mr.S.Parthasarathy, learned counsel on record for habeas corpus petitioner is before us.

4. The aforementioned detention order has been made on the premise that the detenu is a 'Sexual Offender' under Section 2(ggg) of 'The Tamil Nadu Prevention of Dangerous



HCP No.85 of 2023

WEB COPY

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 detention order has been assailed inter alia on the ground that there is no cogent material to come to the conclusion that there is compelling necessity to detain him in custody under Act 14 of 1982.

6. Prima facie case made out for issue of notice.

7. Admit. Issue notice returnable in four weeks.

8. Mr.R.Muniyapparaj, learned Additional Public Prosecutor, State of Tamil Nadu accepts notice for all respondents. List the captioned Habeas Corpus Petition accordingly.'

2. The aforementioned order made in the 23.01.2023 Admission listing shall be read as an integral part and parcel of this order which means that the short forms, short references and abbreviations used in the order in the Admission listing shall be used in the instant order also.

3. There is no adverse case. This solitary case which is the sole substratum of the impugned preventive detention order is Crime No.36 of



HCP No.85 of 2023

2022 on the file of Coimbatore City All Women Police Station for alleged offences under Sections 5(k)(m) read with 6 of 'The Protection of Children from Sexual Offences Act, 2012' [hereinafter 'POCSO 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.S.Parthasarathy, learned 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 qua challenge to the impugned preventive detention order on one point and that point is not providing 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.88 of the booklet which is 'Certificate of Examination for Sexual Offences' given by District Police Surgeon. No Tamil translation of the above document



HCP No.85 of 2023

has been furnished to the detenu. We had the benefit of perusing the booklet.

We also noticed that the 'Certificate of Examination for Sexual Offences' 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 3rd Std and he is 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



HCP No.85 of 2023

remand passed in English, a language not known to the detainee, 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 detainee 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 the 'Certificate of Examination for Sexual Offences' 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 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.



HCP No.85 of 2023

WEB COPY

9. Apropos, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 11.11.2022 bearing reference C.No.69/G/IS/2022 made by the second respondent is set aside and the detenu Thiru.C.Sasikumar, aged 57 years, son of Thiru.Chinnasamy, 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.)
03.07.2023

Index : Yes

Speaking

Neutral Citation : Yes

mk

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

To

1. State of Tamil Nadu
Rep. by its Secretary
Prohibition & Excise Dept.,
Fort St.George, Chennai-600 009.
2. The Commissioner of Police / Detaining Authority
Coimbatore City.
3. Inspector of Police
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HCP No.85 of 2023

6. The Public Prosecutor
High Court, Madras.

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

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H.C.P.No.85 of 2023

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