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HCP No.115 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.115 of 2023

Anjala
W/o.Manokaran

.. Petitioner

Vs.

1. The State of Tamil Nadu
Rep. by its Additional Chief Secretary to Government
Home, Prohibition and Excise Department
Chennai-600 009.
2. The District Magistrate and District Collector
Dharmapuri District
Dharmapuri.
3. The Superintendent of Police
Dharmapuri District
Dharmapuri.
4. The Superintendent
Central Prison, Salem
Salem District.
5. The Inspector of Police
All Women Police Station
Pennagaram
Dharmapuri.

..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 in S.C.No.26/2022 dated 15.12.2022 on the file of 2nd respondent and quash the same as illegal and consequently, direct the respondents to produce petitioner's son Kumaresan, aged about 20 years, son of Manokaran, who is now detained in Central Prison, Salem, before this Hon'ble Court and set him at liberty.

For Petitioner : Mr.M.Selvam
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 30.01.2023, this Court made the following order:

'Captioned Habeas Corpus Petition has been filed in this Court on 19.01.2023 inter alia assailing a detention order dated 15.12.2022 bearing reference S.C.No.26 of 2022 made by 'second respondent' [hereinafter 'Detaining Authority' for the sake of convenience and clarity]. To be noted, fifth respondent is the Sponsoring Authority.

2. Mother of the detenu is the petitioner.

3. Mr.M.Selvam, learned counsel on record for habeas corpus petitioner is before us. Learned counsel expresses regret for not representing the matter in the previous listing on 27.01.2023. Learned counsel for petitioner submits that ground case qua the



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detenu is for alleged offences under Sections 9(g) r/w 10 of 'The Protection of Children from Sexual Offences Act 2012' [hereinafter 'POCSO Act, 2012' for the sake of convenience and clarity] subsequently, altered into Section 366 IPC and 5(g) r/w 6 of POCSO Act, 2012 in Crime No.12 of 2022 on the file of Pennagaram All Women Police Station.

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 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 some of the documents furnished in the booklet were illegible which prevented the detenu from making an effective representation to the Government.

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

7. Mr.R.Muniyapparaj, learned Additional Public Prosecutor, State of Tamil Nadu accepts notice for all respondents. List the captioned Habeas Corpus Petition along with H.C.P.No.120 of 2023 accordingly.'



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2. The aforementioned order made in the 30.01.2023 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.12 of 2022 on the file of Pennagaram All Women Police Station for alleged offences under Sections 9(g) read with 10 of POCSO Act and subsequently, altered into Section 366 of IPC and Sections 5(g) read with 6 of POCSO Act. 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.M.Selvam, 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



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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 Nos.37 and 38 of the booklet which is Accident Register. No Tamil translation of the above document has been furnished to the detenu. We had the benefit of perusing the booklet. We also noticed that the Accident Register 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 10th 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 the Accident Register 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



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preventive detention 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 15.12.2022 bearing reference S.C.No.26/2022 made by the second respondent is set aside and the detenu Thiru.Kumaresan, male, aged 20 years, son of Thiru.Manokaran, 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.)
28.06.2023

Index : Yes
Speaking
Neutral Citation : Yes
mk

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

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



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mk

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To

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