



H.C.P.No.143 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.07.2023

CORAM

THE HONOURABLE MR.JUSTICE **M.SUNDAR**
and
THE HONOURABLE MR.JUSTICE **R.SAKTHIVEL**

H.C.P.No.143 of 2023

J.Mahalakshmi

.. Petitioner

Vs

- 1.The State of Tamil Nadu
Rep. By its Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai -9.
- 2.The District Collector and District Magistrate,
O/o. District Collector and District Magistrate,
Nagapattinam District, Nagapattinam.
- 3.The Superintendent of Police,
Nagapattinam District, Nagapattinam.
- 4.The Superintendent,
Central Prison, Tiruchirappalli.
- 5.The Circle Inspector of Police,
Nagore Circle,
Nagapattinam District.

.. 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 in connection with detention order passed in COC No.01/2023

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dated 06.01.2023 on the file of the 2nd respondent herein and set aside the same as illegal and direct the respondents to produce the detenu Jayamurugan, S/o. Ponnaiyan, male, aged 43 years, who is detained in Central Prison, Tiruchirappalli, before this Court and set him at liberty.

For Petitioner : Mr.K.A.S.Prabhu
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 01.02.2023, 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 06.01.2023 bearing reference C.O.C.No.01/2023 made by 'second respondent' [hereinafter 'Detaining Authority' for the sake of convenience and clarity]. To be noted, fifth respondent is the Sponsoring Authority.

2. Wife of the detenu is the petitioner.

3. Ms.S.Vasavi Sridevi, learned counsel on record for habeas corpus petitioner is before us. Learned counsel for petitioner submits that ground case qua the detenu is for alleged offences under Sections 4(1)(i), 4(i)(aaa) read with 4(1-A) of TNP Act, 1937 in Crime No.248 of 2022 on the file of Thirukkannapuram Police Station.

4. The aforementioned detention order has been made on the premise that the detenu is a 'Bootlegger' under Section



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2(b) 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 the detenu was arrested and produced before the learned Judicial Magistrate No.II, Nagapattinam on 18.11.2022 but the detention order has been passed on 06.01.2023 which clearly shows that there is a delay of 48 days in passing the detention order.

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 accordingly.'

2. The aforementioned order made in the 01.02.2023 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 are three adverse cases. The ground case which constitutes substantial part of substratum of the impugned preventive detention order is Crime No.248 of 2022 on the file of Thirukannapuram Police Station for the alleged offences under



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Sections 4(1)(i), 4(1)(aaa) r/w 4(1-A) of TNP 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.K.A.S.Prabhu, 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. As would be evident from the aforementioned 01.02.2023 order (more particularly paragraph 5 thereat) at the time of admission, the point that the detenu was arrested on 18.11.2022 but the impugned preventive detention order was made only on 06.01.2023 was projected, but in the final hearing today, when we perused the case file we find that the detaining authority has relied on the order dated 24.11.2022 in Cr.M.P.No.3910 of 2022 on the file of Principal District and Sessions Judge, Nagapattinam in the case of one Rajvimal (hereinafter *Rajvimal's case* bail order for the sake of convenience and clarity) for arriving at subjective satisfaction qua imminent possibility of detenu being enlarged on bail. In the grounds



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of impugned preventive detention order, this point has been articulated as follows:

'6... In similar case (i.e) (1) Crime Number 244/2022, u/s 4(1)(aaa) r/w 4(1-A) of Tamil Nadu Prohibition Act, 1937 of Thirukkannapuram Police Station, bail was granted by the Court of Principal District and Sessions Judge, Nagapattinam in Cr.M.P. No.3910/2022 dated 24.11.2022 to an accused by name Thiru.Rajvimal, S/o Selvaraj and (2) in Crime Number 245/2022 u/s 4(1)(aaa) r/w 4(1-A) of Tamil Nadu Prohibition Act, 1937 of Thirukkannapuram Police Station, bail was granted by the Court of Principal District and Sessions Judge, Nagapattinam in Cr.M.P.No.3911/2022, dated 24.11.2022, to an accused by name Thiru.Karthi, S/o.Murugesan.

Hence, I am satisfied that there is a real and imminent possibility of Thiru.Jayamurugan, male, aged 43/2023, S/o.Ponnaiyan coming out on bail by filing a bail application for the above case before the appropriate Court and Higher Court....'

6. Aforementioned *Rajvimal's* case bail order has been furnished to the detenu as part of the grounds booklet at page Nos.105 and 106 of the grounds booklet. This *Rajvimal's* case bail order has been made in English by the learned Sessions Judge but Tamil translation of the



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same has not been provided in the grounds booklet. To be noted, from the confession statement in the grounds booklet, we find that literacy level of the detenu is 10th standard and he is conversant only with Tamil.

7. We find that the aforementioned point turns heavily on records and therefore learned Prosecutor really does not have much of a say. We remind ourselves of *Powanammal principle* i.e., ratio laid down by Hon'ble Supreme Court in **Powanammal Vs. State of Tamil Nadu** reported in **(1999) 2 SCC 413** wherein the relevant paragraphs are paragraphs 6 and 16, which 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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8. We find that *Rajvimal's* case bail order which has been relied on by the detaining authority for arriving at subjective satisfaction qua imminent possibility of detenu being enlarged on bail is a critical document as regards the impugned preventive detention order. Not furnishing Tamil translation of this critical document is fatal to the impugned preventive detention order. Sequitur is impugned preventive detention order is liable to be dislodged.

9. Ergo, the further sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 06.01.2023 bearing reference C.O.C.No.01/2023 made by the second respondent is set aside and the detenu Thiru.Jayamurugan, aged 43 years, Son of Thiru.Ponnaiyan, 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.)
10.07.2023

Index : Yes/No
Neutral Citation : Yes/No
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P.S: Registry to forthwith communicate this order to Jail authorities in Central Prison, Thiruchirappalli.

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To

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- 1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai -9.
- 2.The District Collector and District Magistrate,
O/o. District Collector and District Magistrate,
Nagapattinam District, Nagapattinam.
- 3.The Superintendent of Police,
Nagapattinam District, Nagapattinam.
- 4.The Superintendent,
Central Prison, Tiruchirappalli.
- 5.The Circle Inspector of Police,
Nagore Circle,
Nagapattinam District.
- 6.The Public Prosecutor
High Court, Madras.



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

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