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H.C.P.No.126 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.07.2023

Coram

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

H.C.P.No.126 of 2023

M.Jancy Mary

.. Petitioner

VS

1.The State of Tamil Nadu rep. By its
Secretary to Government,
Prohibition and Excise Department,
Fort St.George, Chennai – 600 009.

2.The District Magistrate and District Collector,
Office of the District Collector, Nilgiris District.

3.The Superintendent of Police,
Central Prison, Coimbatore.

4.The Superintendent of Police,
Superintendent of Police Office,
Nilgiris District.

5.The Inspector of Police,
G2 Pudumund Police Station,
Nilgiris 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 relating to the petitioner's son detention under Tamil Nadu
Act 14 of 1982 vide detention order dated 20.12.2022 on the file of
the second respondent herein made in proceedings Memo



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Cr.M.P.No.12/2022 (Sexual Offender), quash the same as illegal and consequently direct the respondents herein to produce the petitioner's son namely Ajith, S/o.Sivakumar, aged 21 years before this Court and set the petitioner's son at liberty from detention, now the petitioner's son detained at Central Prison, Coimbatore.

For Petitioner : Mr.E.Aneesh Vinayak
for Mr.Deepan Uday

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 23.01.2023 inter alia assailing a detention order dated 20.12.2022 bearing reference Cr.M.P.No.12/2022 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.Deepan Uday, 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 5(l), 5(m) and 6 of Protection of Children From Sexual Offences Act, 2012 and Sections 376AB and 506(i) of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] in Crime No.75 of 2022 on the file of Pudumund Police Station.



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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, Slumgrabbers 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 proper documents have not been served to the detenu.

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 is no adverse case. The ground case which is the sole substratum of the impugned preventive detention order is Crime No.75 of 2022 on the file of Pudumund Police Station for the alleged offences under Sections 5(l), 5(m) and 6 of POCSO Act and 376AB and 506(i) of IPC. Owing to the nature of the challenge to the



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impugned preventive detention order, it is not necessary to delve into the factual matrix or be detained further by facts.

4. Mr.E.Aneesh Vinayak, 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. In the Admission Board, the point that proper documents have not been served on the detenu was projected, in the final hearing today, learned counsel for petitioner projected his argument in his challenge against the impugned preventive detention order on the point that translated copy of a document relied on by the detaining authority in a language which the detenu is conversant with, has not been furnished to the detenu. Elaborating on the submission, learned counsel drew our attention to page No.35 of the grounds booklet which is the remand order. No Tamil translation of this document has been furnished to the detenu. To be noted, the remand order is also not readable. We had the benefit of perusing the booklet. We also noticed that the remand order forms part of the ground on which the impugned preventive detention order has been made. A scanned reproduction of the remand order is as follows:



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6. As this turns on obtaining facts which are before us learned State Additional Public Prosecutor really does not have much of a say.

7. 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**. The question which the Honourable Bench of the Supreme Court addressed to itself in a similar fact situation is captured in paragraph 6 and the manner in which a Honourable 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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8. In the case on hand, we find that remand order 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.

10. Ergo, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 20.12.2022 bearing reference Cr.M.P.No.12/2022 (Sexual Offender) made by the second respondent is set aside and the detenu Thiru.Ajith, aged 21 years, son of Thiru.Sivakumar, 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.)
24.07.2023

Index : Yes/No
Neutral Citation : Yes/No
mmi

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



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To

1. The Secretary to Government,
Prohibition and Excise Department,
Fort St. George, Chennai – 600 009.
2. The District Magistrate and District Collector,
Office of the District Collector, Nilgiris District.
3. The Superintendent of Police,
Central Prison, Coimbatore.
4. The Superintendent of Police,
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5. The Inspector of Police,
G2 Pudumund Police Station,
Nilgiris District.
6. The Public Prosecutor,
High Court, Madras.



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and
R.SAKTHIVEL, J.,**

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