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H.C.P.No.149 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.149 of 2023

Shakeela Banu

.. Petitioner

Vs

- 1.The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai -9.
- 2.The District Collector and District Magistrate,
of Tiruvannamalai District,Tiruvannamalai.
- 3.The Superintendent of Police,
Tiruvannamalai District, Tiruvannamalai.
- 4.The Superintendent of Prison,
Central Prison, Vellore.
- 5.The Inspector of Police,
Vandavasi South Police Station,
Tiruvannamalai 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 records in connection with the order of detention passed by the 2nd respondent 12.01.2023 in D.O.No.08/2023-C2 against the petitioner's husband

Page Nos.1/8



H.C.P.No.149 of 2023

Rahamathillah, Male, aged 35 years, S/o.Abdul Majid, who is confined at Central Prison, Vellore and set aside the same and direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner : Mr.D.Balaji
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 02.02.2023, 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 12.01.2023 bearing reference D.O.No.08/2023-C2 made by 'second respondent' [hereinafter 'Detaining Authority' for the sake of convenience and clarity]. To be noted, fifth respondent is the Sponsoring Authority.

2. The wife of the detenu is the petitioner.

3. Mr.V.Manimaran, learned counsel representing Mr.D.Balaji, 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 294(b), 323, 324, 506(ii) IPC @ 302 IPC in Crime No. 204 of 2022 on the file of Vandavasi South Police Station.

4. The aforementioned detention order has been made on the premise that the detenu is a 'Goonda' under Section 2(f) of 'The Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Cyber law offenders, Drug-offenders, Forest-



WEB COPY



H.C.P.No.149 of 2023

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 similar case relied on by the Detaining Authority is not similar in nature and also on the ground the remand order and the detention order in English were not properly translated in Tamil, which prevented the detenu from making an effective representation.

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 02.02.2023 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.204 of 2022 on the file of Vandavasi South Police Station for the alleged offences under Sections 294(b), 323, 324 and 506(ii) of IPC. Owing to the nature of the challenge to the impugned preventive



H.C.P.No.149 of 2023

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

4. Mr.D.Balaji, learned 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 02.02.2023 order (more particularly paragraph 5 thereat) at the time of admission, learned counsel projected the points that the similar case relied on by the detaining authority is not similar in nature and remand order and detention order were not properly translated in Tamil but in the final hearing today, learned counsel on record for petitioner projected his argument in his challenge against the impugned preventive detention order on the point that translated copies of the documents relied on by the detaining authority in a language which the detenu is conversant with, have not been furnished to the detenu. Elaborating on the submission, learned counsel drew our attention to page Nos.89 to 93 of the grounds booklet which are the remand order dated 04.11.2022 and remand extension orders dated 18.11.2022,



H.C.P.No.149 of 2023

02.12.2022, 16.12.2022 and 30.12.2022 made by learned Judicial Magistrate, Vandavasi. No Tamil translation of these documents have been furnished to the detenu. We had the benefit of perusing the grounds booklet. We also noticed that the said documents form part of the ground on which the impugned preventive detention order has been made.

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

7. Be that as it may we are informed that the literacy level of the detenu is 5th 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:



H.C.P.No.149 of 2023

'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 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. '

8. In the case on hand, we find that the aforementioned documents which have been relied on as part of the grounds of detention qua impugned preventive detention order are crucial documents and not furnishing the same in Tamil the lone language known to the detenu has impaired his constitutional right to make an effective representation qua the impugned preventive detention order. We therefore have no hesitation in saying that the impugned preventive detention order deserves to be dislodged.

9. Ergo, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 12.01.2023 bearing reference D.O.No.08/2023-C2 made by the second respondent is set aside and

Page Nos.6/8



H.C.P.No.149 of 2023

the detenu Thiru.Rahamathullah, aged 35 years, Son of Thiru.Abdul Majid, 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, Vellore.

To

- 1.The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai -9.
- 2.The District Collector and District Magistrate,
of Tiruvannamalai District,Tiruvannamalai.
- 3.The Superintendent of Police,
Tiruvannamalai District, Tiruvannamalai.
- 4.The Superintendent of Prison,
Central Prison, Vellore.
- 5.The Inspector of Police,
Vandavasi South Police Station,
Tiruvannamalai District.
- 6.The Public Prosecutor
High Court, Madras.



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H.C.P.No.149 of 2023

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

mmi

H.C.P.No.149 of 2023

10.07.2023

Page Nos.8/8