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H.C.P.No.135 of 2023

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.03.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and
THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

H.C.P.No.135 of 2023

V.Dhanalakshmi
W/o.Venkatesh

.. Petitioner/mother of detenu

Vs

1. State of Tamil Nadu Represented by
The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai - 600 009.
2. The Commissioner of Police, Tambaram City,
Office of the Commissioner of Police,
Sholinganallur, Chennai – 600 119.
3. The Superintendent,
Central Prison, Puzhal,
Chennai – 600 066.
4. The Inspector of Police,
T-13, Kundrathur Police Station,
Chennai – 600 069.

.. 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 relating to the



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impugned order of detention dated 25.07.2022 in No.110/BCDFGISSSV/2022 passed by the 2nd respondent herein and quash the same and consequently direct the respondents to produce the detenu Govindharaj @ Raj, male, aged 24 years, S/o.Venkatesh now confined in Central Prison, Puzhal, Chennai before this Court and set him at liberty.

For Petitioner : Mr.K.Prasanthan
For Respondents : Mr.R.Muniyapparaj
Additional Public Prosecutor
assisted by
Mr.M.Sylvester John, Advocate

ORDER

[Order of the Court was made by **M.NIRMAL KUMAR, J.**]

Captioned 'Habeas Corpus Petition' ['HCP' for the sake of brevity] has been filed by mother of detenu assailing a 'preventive detention order dated 25.07.2022 bearing reference 110/BCDFGISSSV/2022' [hereinafter 'impugned detention order' for the sake of convenience and brevity]. To be noted, fourth respondent is the sponsoring authority and second respondent is the detaining authority as impugned detention order has been made by second respondent.

2. Impugned detention order has been made under 'The Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Cyber law offenders, Drug-offenders, Forest-offenders, Goondas, Immoral traffic offenders, Sand-



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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] on the premise that the detenu is a 'Goonda' within the meaning of Section 2(f) of Act 14 of 1982.

3. There are three adverse cases and one ground case. The ground case which is the substratum of the impugned detention order is Crime No.474 of 2022 on the file of T-5, Kundrathur Police Station for alleged offences under Sections 341, 294(b), 336, 392, 397 and 506(ii) of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity]. Owing to the nature of the challenge to the impugned detention order, it is not necessary to delve into the factual matrix or be detained further by facts.

4. Mr.K.Prasanthan, learned counsel representing the counsel on record for petitioner and Mr.R.Muniyapparaj, learned State Additional Public Prosecutor, assisted by Mr.M.Sylvester John, learned counsel for all respondents are before us.



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5. At the time of admission, learned counsel for petitioner had raised several points, one of the point is that the detention order was not intimated to the family members / friends of the detenu which prevented the right of detenu's family members to make effective representation. Today, during the argument, he further raised a ground that in the Special Report (page 413) it has been stated that the relatives of the detenu are taking steps to move bail application before the appropriate Court. He further submitted that in the entire booklet there is nothing to show either by way of statement or any material to substantiate such claim that steps have been taken by any of the relatives. Hence, submitted that subjective satisfaction arrived at by the detaining authority regarding imminent possibility of the detenu being enlarged on bail is impaired.

6. Now, learned counsel for the petitioner raised additional points and the same are as follows:

(i)The arrest of the detenu and the Detention Order, dated 25.07.2022 were not intimated to the family members / friends of the detenu.

(ii)The Remand Order, dated 03.07.2022 and the Remand Extension Order, dated 15.07.2022 have not been properly translated.



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(iii)The Detaining Authority in the Detention Order in paragraph No.4

had arrived at the subjective satisfaction based on the Sponsoring Authority's Special Report that the relatives are taking steps to file bail application in the ground case in Crime No.474 of 2022 by filing a bail application in appropriate Court. He further submitted that the detenu is only 8th std school drop out. For the subjective satisfaction, the Detaining Authority relied on the Special Report of the Sponsoring Authority/4th respondent. Further, there is no material to substantiate what steps being taken by the family members / friends in filing bail application. Further, the Special Report is without any date. Thus, the detenu had been impaired in making effective representation due to improper translation. Further, the Special Report is not supported with any material. Hence, the subjective satisfaction arrived at by the Detaining Authority is not proper. Therefore, the learned counsel for the petitioner prayed for setting aside the detention order.

7. Learned Additional Public Prosecutor submitted that the arrest of the detenu was informed to the petitioner's mother, referring to the arrest intimation, which is at page No.335 of the booklet, wherein the mother of the detenu acknowledged the same by affixing signature. He further submitted that in the Tamil version of the Remand Order, dated 03.07.2022, the factual



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position recorded correctly. As regards, English translation, the learned Additional Public Prosecutor stated that by going through the same, there is no ambiguity caused to the detenu. He further submitted the Sponsoring Authority in the Special Report recorded family members of the detenu are taking steps to file bail application, but he fairly submitted that no supporting statement or materials.

8. This Court considered the rival submissions and perused the materials available on record.

9. A scanned reproduction of the Remand Order, dated 03.07.2022, which is at page Nos.345 & 347 of the booklet, reads as follows:



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In the Court of the Judicial Magistrate at Sriperumbudur

Present: Thiru.K.Ramkumar,M.L.,
Judicial Magistrate, Sriperumbudur.

345
D.W. - 11/62/22
25/67/22

State by,
The Inspector of Police,
Kundrathur PS,
Cr.No.474/2022,
U/s.341, 294(b), 336, 392, 397, 506(2) IPC.

Complainant.

Govindaraj (Raj), Age 24, S/o. Venkadesan, Ambathkar Salai,
Sathiya School Back Side, Valasaravakkam, Chennai 77.

Accused.

Remand order

03.07.2022

Accused are produced in residence at 10.45 PM on 03.07.2022 through Inspector G.Chandru. Grounds of arrests explained to them. No complaints against Police. Informed about free legal aid. 2nd Accused submitted that sustain swallow at left cheek and Jaw at yesterday night by falling from bile. Materials and requestion prused. Prima facie alligations made out against accused. See 41 Cr.P.c. complaint. Satisfisied. Remanded to Judicial Custody till 15.07.2022.

Sd/-XXXXXXX
Judicial Mgistrate,
Sriperumbudur.

// t.c.f.b.o.//

P. 35
Head 20/10/22
Judicial Magistrate Court,
Sriperumbudur.

உண்மை நகல்
காவல் ஆய்வாளர்
T13 குன்றத்தூர் PS
சென்னை-69.



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(34)

தீதித்தறை நடுவர், ஸ்ரீபெரும்புதூர் நீதிமன்றத்தில்
முன்விலை - திரு எம்.குமார், எம்.எல்.
தீதித்தறை நடுவர், ஸ்ரீபெரும்புதூர்

அத தர்ப்பில்
காவல் ஆய்வாளர்
குன்றத்தூர் காவல் துறையின்
ஒற்ற எண் 474/2022
எ.இ. 341, 294(இ), 336, 392, 397, 506(2) இ.த.ச.

காதி

கேள்வித்தர்ப்பு (எ) எண், கலந்து 24,
ந.பெ. பெரும்புதூர்
அப்பெருமான் சபையை
சந்திப்ப பண்பி பின்பற்றும்
காவலாளர், சென்னை - 77

காதி

காதி

காவலாளர், உத்தரவு

03.07.2022 - எதிரியை காவல் ஆய்வாளர் திரு சத்திரகுமார் என் விட்டல் 03.07.2022 ம்
தேதி இரவு 10.45 மணிக்கு என் முன்பு ஆஜர் செய்யப்பட்டது. கைது சென்றதற்கான
காரணம் விவரிக்கப்பட்டது. காவலர்கள் பீது முயர் ஏதும் இல்லை. இரவு சட்ட உதவி
பற்றி தெரிவிக்கப்பட்டது. எதிரி தேற்ற வலக்கிவந்து விழுந்து இடது கன்னத்தில்
விக்சம் ஏற்பட்டிருந்தது. விண்ணப்பம் பரிசீலிக்கப்பட்டது. குற்றம் செந்தராக தோற்றத்தில்
தெரிந்து திருப்தி அடைபட்டது. இரவு 41 கு.வி.மு.ச. என் மரு முயர். திருப்தி
அடைபட்டது. எனவே எதிரியை 15.07.2022 ம் தேதி கைது தீதிமன்ற காவலில்
வைக்கப்பட்டது.

மூம்
தீதித்தறை நடுவர்
ஸ்ரீபெரும்புதூர்

மூம்/
காவலமை எழுந்தம்
தீதித்தறை நடுவர் நீதிமன்றம்
ஸ்ரீபெரும்புதூர்

உண்மை நகல்
காவல் ஆய்வாளர்
T13 குன்றத்தூர் PS
சென்னை-69.

10. The Tamil version of the Remand Order ought to be translated as

'முதாந்திரம் உள்ளது'. Likewise, the Remand Extension Order, which is at



page Nos.349 & 351 in the booklet, are not properly translated. The detenu is a 8th std school drop out. Thus, failure to supply the proper Tamil version of the Remand Order passed in English would vitiate his further detention. In the case of ***Powanammal vs. State of Tamil Nadu and another*** reported in [1999] 2 SCC 413 in paragraph Nos.6 & 16, held 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.”

11. On a perusal of the booklet served to the petitioner, it is seen there is no material to show that the relatives of the detenu are taking steps to file bail application, no statement to substantiate Special Report available in page No.413 of the booklet. The subjective satisfaction is impaired. On this ground, the impugned detention order has to be quashed.



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12. Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 25.07.2022 bearing reference 110/BCDFGISSSV/2022 made by the second respondent is set aside and the detenu Thiru. Govindaraj @ Raj, aged 24 years, son of Thiru.Venkatesan, 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.)

(M.N.K.,J.)

30.03.2023

Index : Yes / No

Speaking / non-speaking

Neutral Citation : Yes / No

rsi

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



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**M.SUNDAR, J.,
and
M.NIRMAL KUMAR, J.,**

rsi

To

1. The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai - 600 009.
2. The Commissioner of Police, Tambaram City,
Office of the Commissioner of Police,
Sholinganallur, Chennai – 600 119.
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Central Prison, Puzhal,
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4. The Inspector of Police,
T-13, Kundrathur Police Station,
Chennai – 600 069.
5. The Public Prosecutor,
High Court, Madras.

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