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H.C.P.No.173 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.06.2023

Coram

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

H.C.P.No.173 of 2023

Savithiri

.. Petitioner /
Mother of detenu

VS

1.The State of Tamil Nadu
rep.by its Additional Secretary to Government
Home, Prohibition and Excise Department,
Secretariat, Chennai – 600 009.

2.The District Collector and District Magistrate
Coimbatore District
Coimbatore

3.The Superintendent of Prison
Central Prison
Coimbatore -18

4. The Superintendent of Police
Coimbatore District

5. The Inspector of Police
All Women Police Station
Mettupalayam
Coimbatore District

.. Respondents



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Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus calling for the records pertaining to the detention order passed by the second respondent in Cr.M.P.No.41/S.O/2022/E1 dated 31.12.2022 and set aside the same and direct the respondents to produce the petitioner's son namely S.Rameshkumar @ Chinnathambi, son of Subbaiya Gowder, aged about 42 years, who is now confined in Central Prison, Coimbatore before this Court and set him at liberty.

For Petitioner : Mr.M.Vijayaragavan
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 07.02.2023, this Court made the following order:

'Captioned Habeas Corpus Petition has been filed in this Court on 27.01.2023 inter alia assailing a detention order dated 31.12.2022 bearing Cr.M.P.No.41/S.O/2022/E1 made by 'second respondent' [hereinafter 'Detaining Authority' for the sake of convenience and clarity]. To be noted, fifth respondent is the Sponsoring Authority.



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2. *Mother of the detenu is the petitioner.*

3. *Mr.M.Vijaya Ragavan, 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 341, 506(ii) IPC and 5(l)(m) r/w 6 of Protection of Children from Sexual Offence Act, 2012 in Crime No.582 of 2022 on the file of Karamadai 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 grounds that there is a delay of 54 days in passing the detention order; vernacular version of the arrest intimation has not been furnished to the detenu and some of the pages in the booklet furnished to the detenu are not legible.*

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. '*



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2. The aforementioned order made in the 07.02.2023 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. This solitary case which is the sole substratum of the impugned preventive detention order is Crime No.582 of 2022 on the file of Karamadai Police Station for alleged offences under Sections 341 and 506(ii) of IPC and 5(1)(m) read with Section 6 of the Protection of Children from Sexual Offence Act, 2012. 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.Vijaya Ragavan, learned counsel on record for petitioner and Mr.E.Raj Thilak, learned State Additional Public Prosecutor for all respondents are before us.

5.At the time of admission board, the point that there is a delay of 54 days in passing the detention order, vernacular version of the arrest



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intimation has not been furnished to the detenu and some of the pages in the booklet furnished to the detenu are not legible were projected, learned counsel for petitioner at the hearing projected his argument qua challenge to the impugned detention order on one point and that point is not providing translated copy of documents (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 pages 19 and 20 of the booklet which are Arrest Intimation Form and Arrest / Court Surrender Form. Tamil translation of these documents have not been furnished to the detenu.

6. We had the benefit of perusing the booklet. We also noticed that Arrest Intimation Form and Arrest / Court Surrender Form, form part of the ground on which the impugned 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.

7. Be that as it may, we are informed that the literacy level of the detenu is 9th standard 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. '

8. In the case on hand, we find that Arrest Intimation Form and Arrest / Court Surrender Form which have been relied on as part of the grounds of detention qua impugned detention order are crucial



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documents and not furnishing translation of the same in Tamil, the lone language known to the detenu has impaired his constitutional right to make an effective representation qua the impugned detention order. We therefore have no hesitation in saying that the impugned detention order deserves to be dislodged.

9. Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 31.12.2022 bearing reference Cr.M.P.No.41/S.O/2022/R1 made by the second respondent is set aside and the detenu Thiru.S.Rameshkumar @ Chinnathambi, aged 42 years, son of Thiru.Subbaiya Gowder, 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.)
30.06.2023

Index : Yes

Neutral Citation : Yes

gpa

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



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To

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2. The District Collector and District Magistrate
Coimbatore District
Coimbatore
3. The Superintendent of Prison
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6. The Public Prosecutor,
High Court, Madras.



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

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