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HCP No.206 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.206 of 2023

Shahjahan Beevi
W/o.Mohammed Basha

.. Petitioner

Vs.

1. State represented by its
Home Secretary to the Govt of Tamil Nadu
Home Prohibition and Excise Department
Fort St.George
Chennai-600 009.
- 2, The Commissioner of Police
Tambaram City
Tambaram.
3. The Inspector of Police
T-13, Chitlapakkam Police Station
Chitlapakkam, Chennai-600 064.
4. The Superintendent of Prison
Central Prison
Puzhal.

..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 relating to the



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order of detention passed by the 2nd respondent dated 16.11.2022 in BCDFGISSSV No.195/2022 against the petitioner's son the detenu M.Samsudeen, male, aged about 34 years, son of Mohammed Basha, who is confined at Central Prison, Puzhal and set aside the same and direct the respondents to produce the detenu before this Hon'ble Court and set him at liberty.

For Petitioner : Mr.T.Perinbanathan
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 09.02.2023, this Court made the following order:

'Captioned Habeas Corpus Petition has been filed in this Court on 02.02.2023 inter alia assailing a 'detention order dated 16.11.2022 bearing BCDFGISSSV No.195/2022' (hereinafter 'impugned detention order' for the sake of brevity and clarity) made by 'second respondent' [hereinafter 'Detaining Authority' for the sake of convenience and clarity]. To be noted, third respondent is the Sponsoring Authority.

2. *Mother of the detenu is the petitioner.*
3. *Mr.T.Perinbanathan, 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*



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Sections 363 A and 506(i) IPC in Crime No.446 of 2022 on the file of T-13 Chitlapakkam 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-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 impugned detention order has been assailed inter alia on the ground that the subjective satisfaction arrived at by the detaining authority is without material as the detenu has not filed any bail application ever since the date of arrest.*

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 09.02.2023 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.



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3. There is one adverse case and one ground case. The ground case which constitutes substantial part of substratum of the impugned preventive detention order is Crime No.446 of 2022 on the file of T-13 Chitlapakkam Police Station for alleged offences under Sections 363A and 506(i) of IPC. 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.T.Perinbanathan, learned counsel on record for petitioner and Mr.E.Raj Thilak, learned State Additional Public Prosecutor for all respondents are before us.

5. Though very many grounds have been raised in the support affidavit, learned counsel for petitioner at the hearing projected his argument qua challenge to the impugned preventive detention order on one point and that point is providing improper translated copy of a document (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 page No.137 of the booklet which is remand order dated 03.11.2022. Improper



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Tamil translation of the above document has been furnished to the detenu.

We had the benefit of perusing the booklet. The remand order in English translation says accused was produced at 11.55 a.m. but Tamil translation of the remand order says 'இரவு 11.55 மணிக்கு'. We also noticed that the remand order dated 03.11.2022 forms part of the ground on which the impugned preventive 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.

6. Be that as it may, we are informed that the literacy level of the detenu is 4th std 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:



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'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. '

7. We find that the aforementioned **Powanammal** case applies in all fours to the case on hand as we find that the remand order dated 03.11.2022 which has been relied on as part of the grounds of detention qua impugned preventive detention order is a crucial document and improper translation of 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.

8. Before concluding, we also remind ourselves that preventive detention is not a punishment and HCP is a high prerogative writ.



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9. Apropos, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 16.11.2022 bearing reference BCDFGISSSV No.195/2022 made by the second respondent is set aside and the detenu Thiru.Samsudeen, male, aged 34 years, son of Thiru.Mohamed Basha, 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

Speaking

Neutral Citation : Yes

mk

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

To

1. State represented by its
Home Secretary to the Govt of Tamil Nadu
Home Prohibition and Excise Department
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Chennai-600 009.
- 2, The Commissioner of Police
Tambaram City, Tambaram.
3. The Inspector of Police
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5. The Public Prosecutor, High Court, Madras.



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

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