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H.C.P.No.269 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.07.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

H.C.P.No.269 of 2023

Mrs.S.Selvi

.. Petitioner /
Mother of the detenu

Vs

1. The State of Tamilnadu
Represented by the Secretary to Government
Home, Prohibition and Excise Department
Secretariat
Chennai – 600 009
2. The District Magistrate and District Collector
Master Plan Complex
Collector's Office
Tiruvallur District
Tiruvallur – 602 001
3. The Superintendent of Police
District Police Office
Tiruttani Main Road
Tiruvallur District
Tiruvallur – 602 001

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4. The Superintendent of Prison
Central Prison-II
Puzhal, Chennai – 600 066

5. The Inspector of Police
Manavalanagar Circle
Tiruvallur District – 602 002

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus calling for the records in relation with the detention order passed by the second respondent herein dated 12.01.2023 bearing B.C.D.F.G.I.S.S.S.V.No.01/2023, T.P.D.A.No. 4064 against the petitioner's son named Mr.Praveen @ Kulla, son of Sekar, Male, aged about 23 years, detained as “Goonda” at Central Prison-II, Puzhal, Chennai – 600 066 and set aside the same and direct the respondents to produce the detenu before this Court and set the detenu at liberty.

For Petitioner : Mr.S.R.Karthikeyan

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 22.02.2023, this Court made the following order:

"Captioned Habeas Corpus Petition has been filed in



this Court on 10.02.2023 inter alia assailing a detention order dated 12.01.2023 bearing reference B.C.D.F.G.I.S.S.S.V.NO.01/2023 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.S.R.Karthikeyan, 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, 294(b), 324, 307 and 506(ii) 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] in Crime No.324 of 2022 on the file of Manavalanagar 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 detention order has been assailed inter alia on the ground that confession statement of the detenu, 161



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statements of LW-2 and LW8 to 12, order of remand and its extension with regard to adverse case are not attached in the booklet.

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 22.02.2023 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 one adverse case and one ground case. The ground case which constitutes part of substratum of the impugned preventive detention order is Crime No.324 of 2022 on the file of Manavalanagar Police Station for alleged offences under Sections 341, 294(b), 324, 307 and 506(ii) of IPC. Owing to the nature of the challenge to the impugned preventive



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

4. Mr.S.R.Karthikeyan, 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 i.e., in the Admission Board, the point that confession statement of the detenu, Section 161 Cr.P.C statements of LW-2 and LW8 to 12, order of remand and its extension with regard to adverse case are not attached in the booklet was raised but in the final hearing, learned counsel for petitioner projected his argument qua his campaign against the impugned preventive detention order on one point and that one point turns on incorrect/improper translation. Learned counsel adverting to pages 64 & 65 [bail petition in English] and 67 & 68 [Tami translation of bail petition] of the grounds booklet submitted that bail petition of the detenu was not properly translated in Tamil.



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6. We had the benefit of perusing the booklet. We also noticed that bail petition forms part of the grounds on which the impugned preventive detention order has been made. We find that paragraph 4 of the bail petition is not found in Tamil version.

7. 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.

8. Be that as it may, we are informed that 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 principle 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 Hon'ble 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



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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. '

9. In the case on hand, we find that bail petition of the detenu which has been relied on as part of the grounds of detention qua impugned detention order is a crucial document and not furnishing correct 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.



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10. Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 12.01.2023 bearing reference B.C.D.F.G.I.S.S.S.V No.01/2023 made by the second respondent is set aside and the detenu Thiru.Praveen @ Kulla, aged 23 years, son of Thiru.Sekar 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.)

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Index : Yes

Neutral Citation : Yes

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



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To

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6. The Public Prosecutor
Madras High Court
Chennai



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