



H.C.P.No.263 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.08.2023

CORAM

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

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Vijaya

.. Petitioner

Vs

- 1.State of Tamil Nadu rep. By its
Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai – 9.
2. The District Collector and District Magistrate,
Perambalur District, Perambalur.
- 3.The Superintendent of Prison,
Central Prison, Thiruchirapalli.
- 4.The Superintendent of Police,
Perambalur District.
- 5.The Inspector of Police,
Arumbavoor Police Station,
Perambalur 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 entire
records pertaining to the detention order passed by the second

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respondent in Cr.M.P.No.01/2023 dated 18.01.2023 and set aside the same and direct the respondents to produce the petitioner's son namely Mohan, S/o.Perumal, aged about 33 years, who is now confined in Central Prison, Thiruchirapalli, 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 21.02.2023, the following order was made:

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

(Order of the Court was made by M.SUNDAR, J.,)

Captioned Habeas Corpus Petition has been filed in this Court on 10.02.2023 inter alia assailing a detention order dated



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18.01.2023 bearing reference Cr.M.P.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.M.Vijayaragavan, 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 450 and 506(i) of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] and Section 5(m) read with Section 6 of 'the Protection of Children from Sexual Offences Act, 2012 [Act No.32 of 2012]' [hereinafter 'POCSO Act' for the sake of convenience and clarity] in Crime No.291 of 2022 on the file of Arumbavur 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 ground that the Tamil translation of Accident Registers and medical records have not been furnished to the detenu 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 Admission Board order captures all essentials that are imperative for appreciating this order and therefore, we are not setting out the same again in this order. Suffice to say that



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aforementioned Admission Board order shall be read as an integral part and parcel of this order. Be that as it may, we are using the short forms, short references and abbreviations used in the Admission Board order in this order also for the sake of convenience and clarity. To be noted, 'detention order dated 18.01.2023 bearing reference Cr.M.P.No.01/2023' made by the Detaining Authority shall hereinafter be referred to as 'impugned preventive detention order' in this order for the sake of brevity, convenience and clarity.

3. Mr.M.Vijayaragavan, learned counsel on record for petitioner and Mr.E.Raj Thilak, learned Additional Public Prosecutor for all the respondents are before us.

4. As would be evident from paragraph 5 of the Admission Board order, at the time of admission, learned counsel for petitioner predicated his challenge to the impugned preventive detention order on the point that Tamil translation of Accident Registers and medical records have not been furnished to the detenu which prevented the detenu from making an effective representation.



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5. Elaborating on the above submission, learned counsel for petitioner drew our attention to page No.27 which contains the medical report (captioned Accident Register) of the detenu and Page Nos.45 to 47 which contain the medical report (captioned Accident Register) of the victim girl in English and Tamil translation of the said documents have not been furnished to the detenu.

6. We carefully considered the rival submissions. We find from the confession statement of the detenu at page No.37 of the grounds booklet that the literacy level of detenu is Diploma in Polytechnic and the relevant portion reads as under:

'...நான் டிப்ளமோ படித்து விட்டு உறார்வெஸ்டர்
டிரைவராக வேலை செய்து வருகிறேன்....'

7. We had the benefit of perusing the grounds booklet. We also noticed that the above medical reports (which are handwritten and not readable) form part of the grounds on which the impugned preventive detention order has been made or in other words those documents have been relied on by the Detaining Authority in making the impugned preventive detention order. As this turns on obtaining scenario which comes to light from the grounds booklet which is before
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us, learned State Additional Public Prosecutor does not have much of a say.

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8. Be that as it may, the medical reports are technical documents. We remind ourselves of **Powanammal** case i.e., **Powanammal Vs. State of Tamil Nadu**, wherein Hon'ble Supreme Court addressed to itself this translation point in a similar fact situation. The question which the Hon'ble Supreme Court addressed to itself is captured in paragraph 6 and the manner in which Hon'ble Supreme Court answered this question have been captured in paragraphs 6 and 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 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. '

9. In the case on hand, we find that the medical reports which



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have been relied on as part of the grounds of detention qua impugned preventive detention order are crucial documents and not furnishing translation of the same in Tamil has impaired his constitutional right ingrained in Article 22(5) 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.

10. Ergo, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 18.01.2023 bearing reference Cr.M.P.No.01/2023 made by the second respondent is set aside and the detenu Thiru.Mohan, aged 33 years, Son of Thiru.Perumal, 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.)
21.08.2023

Index : Yes
Neutral Citation : Yes
mmi

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

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To

- 1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai – 9.
2. The District Collector and District Magistrate,
Perambalur District, Perambalur.
- 3.The Superintendent of Prison,
Central Prison, Thiruchirapalli.
- 4.The Superintendent of Police,
Perambalur District.
- 5.The Inspector of Police,
Arumbavoor Police Station,
Perambalur District.
- 6.The Public Prosecutor,
High Court, Madras.



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and
R.SAKTHIVEL, J.,**

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