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H.C.P.No.249 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.07.2023

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THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

H.C.P.No.249 of 2023

Shakila

.. Petitioner/
wife of the detenu

Vs.

1. The Secretary to Government
Home, Prohibition and Excise Department
Secretariat, Fort. St. George, Chennai – 600 009.
2. The District Collector and District Magistrate
Thiruvannamalai, Thiruvannamalai District.
3. The Superintendent of Police
Thiruvannamalai, Thiruvannamalai District.
4. The Superintendent of Prison
Central Prison – Vellore, Vellore District.
5. State rep. By its
The Inspector of Police
Mangalam Police Station
Thiruvannamalai 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 relating to the petitioner's husband detention under Tamil Nadu Act 14 of 1982 vide detention order dated 23.01.2023 on the file of the second respondent herein made in proceedings Memo



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D.O.No.11/2023-C2, quash the same as illegal and consequently direct the respondents herein to produce the petitioner's husband namely Kumar, son of Ganesan, aged 38 years before this Court and set the petitioner's husband at liberty from detention, now the petitioner's husband is detained at Central Prison, Vellore.

For Petitioner : Mr.R.Sasikumar

For Respondents : Mr.E.Raj Thilak
Additional Public Prosecutor

ORDER

[Order of the Court was made by M.SUNDAR, J.,]

Captioned 'Habeas Corpus Petition' ['HCP' for the sake of brevity] has been filed by wife of detenu assailing a 'preventive detention order dated 23.01.2023 bearing reference D.O.No.11/2023-C2' [hereinafter 'impugned preventive detention order' for the sake of convenience and brevity] made by 'second respondent' (hereinafter 'detaining authority' for the sake of convenience). To be noted, fifth respondent is the sponsoring authority and second respondent is the detaining authority as impugned preventive detention order has been made by second respondent.

2. Impugned preventive detention order has been made under 'The Tamil Nadu Prevention of Dangerous Activities of Bootleggers,



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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] on the premise that the detenue is a 'Bootlegger' within the meaning of Section 2(b) of Act 14 of 1982.

3. There are two adverse cases and one ground case. The ground case which constitutes substantial part of substratum of the impugned preventive detention order is Crime No.238 of 2022 on the file of Mangalam Police Station for alleged offences 4(1)(aaa) read with 4(1-A)(ii) of Tamil Nadu Prohibition Act, 1937 and Rules 6 and 7 of Tamil Nadu Rectified Spirit Rules, 2000. 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.R.Sasikumar, learned counsel on record for petitioner and Mr.E.Raj Thilak, learned State Additional Public Prosecutor for all respondents are before us.



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5. In the support affidavit qua captioned HCP, several points have been raised/urged but in the final hearing, learned counsel for petitioner projected his argument in his challenge against the impugned preventive detention order on the point that translated copies of the documents relied on by the detaining authority in a language which the detenu is conversant with, have not been furnished to the detenu. Elaborating on the submission, learned counsel drew our attention to page Nos.110 and 111 of the booklet which are the Form of Order for Detention in Custody of an Accused Person and remand extension orders dated 29.12.2022 and 11.01.2023 made by learned Judicial Magistrate II, Thiruvannamalai. No Tamil translation of these documents have been furnished to the detenu. We had the benefit of perusing the booklet. We also noticed that the said documents form part of the ground on which the impugned preventive detention order has been made.

6. As this turns on obtaining facts which are before us learned State Additional Public Prosecutor does not have much of a say.



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7. Be that as it may we are informed that the literacy level of the detenu is 10th standard in school 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**. The question which the Honourable Bench of the Supreme Court addressed to itself in a similar fact situation is captured in paragraph 6 and the manner in which a Honourable 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 the aforementioned documents which have been relied on as part of the grounds of detention qua impugned preventive detention order are crucial documents and not furnishing the same in Tamil the lone language



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known to the detenu has impaired his constitutional right 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.

9. Ergo, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 23.01.2023 bearing reference D.O.No.11/2023-C2 made by the second respondent is set aside and the detenu Thiru.Kumar, aged 38 years, son of Thiru.Ganesan, 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.)
10.07.2023

Index : Yes / No
Neutral Citation : Yes / No
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P.S. Registry to forthwith communicate this order to Jail authorities in Central Prison, Vellore



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To

1. The Secretary to Government
Home, Prohibition and Excise Department
Secretariat
Fort. St. George
Chennai – 600 009
2. The District Collector and District Magistrate
Thiruvannamalai
Thiruvannamalai District
3. The Superintendent of Police
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5. The Inspector of Police
Mangalam Police Station
Thiruvannamalai District
6. The Public Prosecutor
High Court, Madras.



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