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H.C.P.No.281 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.281 of 2023

Chinnammal

.. Petitioner /
Mother of detenu

VS

1.The Additional Chief Secretary to Government
Home, Prohibition and Excise Department
Secretariat
Chennai – 600 009.

2.The Commissioner of Police
Avadi City
Avadi, Chennai

3.The Superintendent, Special Prison for Women
Puzhal, Chennai - 66

4. The Inspector of Police
Anti Vice Squad, Avadi City

.. 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 Memo No.11/BCDFGISSSV/2023 on the file of the second respondent, quash the detention order dated 19.01.2023 and direct the production of the



H.C.P.No.281 of 2023

detenu Kalai @ Kalyani, wife of Ruban, presently detained at the Special Prison for Women, Puzhal, Chennai as Immoral Traffic Offender under Tamil Nadu Act 14 of 1982 before this Court and set her at liberty.

For Petitioner : Mr.S.Senthilvel
for Mr.A.M.Rahamath Ali

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 23.02.2023, this Court made the following order:

'Captioned Habeas Corpus Petition has been filed in this Court on 14.02.2023 inter alia assailing a detention order dated 19.01.2023 bearing reference No. 11/BCDFGISSSV/2023 made by 'second respondent' [hereinafter 'Detaining Authority' for the sake of convenience and clarity]. To be noted, fourth respondent is the Sponsoring Authority.

2. Mother of the detenue is the petitioner.

3. Mr.A.M.Rahamath Ali, learned counsel on record for habeas corpus petitioner is before us. Learned counsel for petitioner submits that ground case qua the detenue is for



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H.C.P.No.281 of 2023

alleged offences under Sections 3(2)a, 4(1), 5(1)a, 6(1)(a) and 7(1)(a) of 'The Immoral Traffic (Prevention) Act, 1956' [hereinafter 'ITP Act' for the sake of brevity] in Crime No.01 of 2023 on the file of Anti Vice Squad, Avadi Commissionerate.

4. The aforementioned detention order has been made on the premise that the detenu is a 'Immoral Traffic Offender' under Section 2(g) 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 similar case relied on by the Detaining Authority to arrive at the subjective satisfaction that there is imminent possibility of detenu being released on bail is not similar in nature.

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."



H.C.P.No.281 of 2023

2. The aforementioned order made in the 23.02.2023 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 are two adverse cases and one ground case. The ground case which constitutes part of substratum of the impugned preventive detention order is Crime No.01 of 2023 on the file of Avadi City Anti-Vice Squad for alleged offences under Sections 3(2)a, 4(1), 5(1)a, 6(1)(a) and 7(1)(a) of ITP Act. 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.S.Senthilvel, learned counsel representing the 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 similar case relied on by the Detaining Authority to arrive at the subjective satisfaction that there is imminent possibility of detainee being released on bail is not similar in nature was urged, in the final hearing, learned counsel for petitioner projected his argument qua challenge to the impugned preventive detention order on one point and that one point turns on not



H.C.P.No.281 of 2023

providing translated copy of a document (relied on by the detaining authority) in a language which the detainee is conversant with. Learned counsel advertent to page 55 of the grounds booklet submitted that copy of victim intimation in Tamil has not been given to the detainee.

6. We had the benefit of perusing the booklet. We also noticed that victim intimation 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.

7. Be that as it may, we are informed that the literacy level of the detainee is 8th standard and she is a school drop out. We are also informed that the detainee 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. '

8. In the case on hand, we find that victim intimation which has been relied on as part of the grounds of detention qua impugned detention order is a crucial document and not furnishing translation of the same in Tamil, the lone language known to the detenue, has impaired her 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.



H.C.P.No.281 of 2023

9. Ergo, the sequitur is, captioned HCP is allowed. Impugned

detention order dated 19.01.2023 bearing reference No.11/BCDFGISSSV/2023 made by the second respondent is set aside and the detenue Tmt. Kalai @ Kalyani, aged 30 years, wife of Thiru.Rooban, 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.)

17.07.2023

Index : No

Neutral Citation :No

gpa

P.S: Registry to forthwith communicate this order to Jail authorities in Special Prison for Women, Puzhal.



H.C.P.No.281 of 2023

To

WEB COPY

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Chennai – 600 009.
2. The Commissioner of Police
Avadi City
Avadi, Chennai
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High Court, Madras.



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

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