



WEB COPY



H.C.P.No.282 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.282 of 2023

R.Rani

.. Petitioner /
Mother of detenu

VS

1.The Secretary to Government
Home, Prohibition and Excise Department
Secretariat,
Fort St. George Chennai – 600 009.

2.The Commissioner of Police
Office of the Commissioner of Police
Avadi

3.The Superintendent of Prison
Central Prison Puzhal, Chennai

4. The Inspector of Police
T-2, Ambattur Estate Police Station
Chennai

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus calling for the records pertaining to the order of detention passed by the second respondent in his



H.C.P.No.282 of 2023

proceeding in No.12/BCDFGISSSV/2023 dated 23.01.2023 and quash the same as illegal and produce the detenu, namely Napoleon, Son of Raja, aged 28 years, now confined in Central Prison, Puzhal II before this Court and set him at liberty.

For Petitioner : Mr.S.Lokesh
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 27.02.2023, this Court made the following order:

'Read this in conjunction with and in continuation of earlier proceedings made in the previous listing on 24.02.2023.

2.Mr.S.Lokesh, learned counsel on record for habeas corpus petitioner is before us. Learned counsel for petitioner adverting to aforementioned earlier proceedings submits that there is no provision of law which prescribes a time frame for passing of the detention order qua the date of arrest and expresses regret for the incorrect representation made in the



WEB COPY



H.C.P.No.282 of 2023

previous listing.

3.Be that as it may, regarding Admission the following order is made: Captioned Habeas Corpus Petition has been filed in this Court on 16.02.2023 inter alia assailing a detention order dated 23.01.2023 bearing reference No.12/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.

4.Mother of the detenu is the petitioner.

5.Learned counsel for petitioner submits that ground case qua the detenu is for alleged offences under Sections 341, 294(b), 323, 324, 397 and 506(ii) of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] in Crime No.385 of 2022 on the file of T-2 Ambattur Estate Police Station.

6. 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].



7. *The detention order has been assailed inter alia on the ground that there was a delay in passing the detention order and page Nos.85, 108, 124, 125 and 126 of the booklet are illegible.*

8. *Prima facie case made out for admission. Admit. Issue Rule nisi returnable by four weeks.*

2. The aforementioned order made in the 27.02.2023 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 four adverse cases and one ground case. The ground case which constitutes part of substratum of the impugned preventive detention order is Crime No.385 of 2022 on the file of T-2 Ambattur Police Station for alleged offences under Sections 341, 294(b), 323, 324, 397 and 506(ii) 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.S.Lokesh, learned counsel on record for petitioner and Mr.E.Raj Thilak, learned State Additional Public Prosecutor for all respondents are before us.



H.C.P.No.282 of 2023

5. At the time of admission board, the point that there was a delay in passing the detention order and some of the pages in the booklet furnished to the detenu are illegible were projected but in the final hearing, learned counsel for petitioner projected his argument qua challenge to the impugned detention order on one point and that one point turns on incorrect/improper translation. Learned counsel advertg to pages 123 and 125 of the booklet submitted that bail order in similar case dated 01.02.2018 in Crl.M.P.No.1759 of 2018 has not been properly translated.

6. We had the benefit of perusing the booklet. We also noticed that bail order in similar case forms part of the ground on which the impugned 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 detenu is 10th 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 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:

'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 bail order in similar case which has been relied on as part of the grounds of detention qua impugned detention order is a crucial document and not furnishing



H.C.P.No.282 of 2023

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.

9. Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 23.01.2023 bearing reference No.12/BCDFGISSSV/2023 made by the second respondent is set aside and the detenu Thiru.Napoleon, aged 28 years, son of Thiru.Raja 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 : Yes

Neutral Citation : Yes

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



H.C.P.No.282 of 2023

To

WEB COPY

1. The Secretary to Government
Home, Prohibition and Excise Department
Secretariat,
Fort St. George Chennai – 600 009.
2. The Commissioner of Police
Office of the Commissioner of Police
Avadi
3. The Superintendent of Prison
Central Prison Puzhal, Chennai
4. The Inspector of Police
T-2, Ambattur Estate Police Station
Chennai
5. The Public Prosecutor,
High Court, Madras.



WEB COPY



H.C.P.No.282 of 2023

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

gpa

H.C.P.No.282 of 2023

17.07.2023