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H.C.P.No.315 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.07.2023

CORAM

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

H.C.P.No.315 of 2023

Sudarvizhi

..

Petitioner

Vs.

- 1.The State of Tamil Nadu rep. By its
Additional Chief Secretary to Government,
Home, Prohibition & Excise Department,
Fort St.George, Chennai-600 009.
2. The District Collector and District Magistrate,
Mayiladuthurai District,
Mayiladuthurai.
- 3.The Superintendent of Police,
Mayiladuthurai District,
Mayiladuthurai.
- 4.The Superintendent of Prison,
Central Prison, Tiruchirappalli.
- 5.The Inspector of Police,
Mayiladuthurai Police Station,
Mayiladuthurai 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 records

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pertaining to the detention order dated 16.12.2022 in C.O.C. No.60/2022 passed by the second respondent and issue direction to produce the body of the petitioner's husband/detenu namely Kumar, S/o.Rajendran, aged 40 years, presently confined at Central Prison, Thiruchirappalli, before this Court and set him at liberty forthwith and quash the same.

For Petitioner : Mr.Swami Subramanian
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 06.03.2023, this Court made the following order:

'Captioned Habeas Corpus Petition has been filed in this Court on 23.02.2023 inter alia assailing a detention order dated 16.12.2022 bearing reference C.O.C.No.60/2022 made by 'second respondent' [hereinafter 'Detaining Authority' for the sake of convenience and clarity]. To be noted, fifth respondent is the Sponsoring Authority.

2. Wife of the detenu is the petitioner.

3. Mr.M.P.Yuvaraj, learned counsel on record for petitioner is before us. Learned counsel for petitioner submits that ground



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case qua the detenu is for alleged offences under Sections 4(1)(i), 4(1)(aaa) read with 4(1-A) of Tamil Nadu Prohibition Act 1937 in Crime No.842 of 2022 on the file of Mayiladuthurai Police Station.

4. The aforementioned detention order has been made on the premise that the detenu is a 'Bootlegger' under Section 2(b) 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 there is a delay in passing the preventive detention order.

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 06.03.2023 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.



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3. There are four adverse cases. The ground case which constitutes substantial part of substratum of the impugned preventive detention order is Crime No.842 of 2022 on the file of Mayiladuthurai Police Station for alleged offences under Sections 4(1)(i), 4(1)(aaa) r/w 4(1-A) of TNP Act. Owing to the nature of the challenge to the impugned detention order, it is not necessary to delve into the factual matrix or be detained further by facts.

4. Mr.Swami Subramanian, learned counsel on record for petitioner and Mr.E.Raj Thilak, learned State Additional Public Prosecutor for all respondents are before us.

5. In the Admission Board, the point that there is a delay in passing the preventive detention order was projected, however, in the final hearing Board, learned counsel for petitioner projected his argument in his challenge against the impugned preventive detention order on the point that translated copies of the bail orders in the similar cases relied on by the detaining authority in a language which the detenu is conversant with, have not been furnished to the detenu.

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Elaborating on the submission, learned counsel drew our attention to page Nos.96, 97, 102 and 103 of the booklet which are similar case bail orders in Cr.M.P.No.997 of 2022 dated 25.04.2022 (Shanmugam's case) and Cr.M.P.No.4000 of 2022 dated 29.11.2022 (Parameshwari's case) on the file of Principal District and Sessions Judge, Nagapattinam. No Tamil translation of these bail orders have been furnished to the detenu. We had the benefit of perusing the booklet. We also noticed that the above bail orders 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.

7. Be that as it may we are informed that the literacy level of the detenu is 5th 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**. 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



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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 similar case bail orders 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 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.



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9. Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 16.12.2022 bearing reference C.O.C. No.60/2022 made by the second respondent is set aside and the detenu Thiru.Kumar, aged 40 years, son of Thiru.Rajendran 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.)
03.07.2023

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, Tiruchirappalli.

To

- 1.The Additional Chief Secretary to Government,
Home, Prohibition & Excise Department,
Fort St.George, Chennai-600 009.
2. The District Collector and District Magistrate,
Mayiladuthurai District,
Mayiladuthurai.
- 3.The Superintendent of Police,
Mayiladuthurai District,
Mayiladuthurai.

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4.The Superintendent of Prison,
Central Prison, Tiruchirappalli.

5.The Inspector of Police,
Mayiladuthurai Police Station,
Mayiladuthurai District.

6.The Public Prosecutor,
High Court, Madras.



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

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