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H.C.P.No.337 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.337 OF 2023

Devikala

.. Petitioner

VS

1.State of Tamil Nadu

Rep. By the Secretary to Government
Department of Home, Prohibition and Excise
Secretariat, Fort St. George,
Chennai.

2.The Commissioner of Police

Greater Chennai
Chennai District.

3.The Superintendent of Prison

Central Prison – Puzhal II
Puzhal, Chennai.

4.The Inspector of Police

P-5, M.K.B. Nagar Police Station,
Chennai.

.. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India
praying for issuance of a Writ of Habeas Corpus to call for the records in
No.24/ BCDFGISSSV/2023 passed by the 2nd respondent on 25.01.2023



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on the file of the 2nd respondent and quash the same as illegal and consequently direct the respondents to produce petitioner's husband Rakesh @ Rakki, Son of Rajan aged about 24 years, before this Court who now detained in Central Prison, Puzhal-II and set him at liberty.

For Petitioner : Mr.A.Elumalai

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 07.03.2023, this Court made the following order:

'Captioned Habeas Corpus Petition has been filed in this Court on 28.02.2023 inter alia assailing a detention order dated 25.01.2023 bearing reference No.24/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.Wife of the detenu is the petitioner.

3.Mr.A.Elumalai, learned counsel on record for habeas corpus petitioner is before us. Learned counsel for petitioner submits that ground case qua the detenu is for



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alleged offences under Sections 341, 294(b), 323, 397 and 506(ii) of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] in Crime No.914 of 2022 on the file of P-5 M.K.B. Nagar Police Station.

4.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].

5.The detention order has been assailed inter alia on the ground that the order of approval and the report of the Advisory Board were not communicated to the detenu.

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.'



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2.The aforementioned order made in the 07.03.2023

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.

3.There are five adverse cases and one ground case. The ground case which constitutes part of substratum of the impugned preventive detention order is Crime No.914 of 2022 on the file of P-5, M.K.B. Nagar Police Station for alleged offences under Sections 341, 294(b), 323, 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.A.Elumalai learned 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, the point that similar case relied on by the Detaining Authority to arrive at the subjective satisfaction that



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there is imminent possibility of detenu 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 providing translated copy of a document (relied on by the detaining authority) in a language which the detenu is conversant with. Learned counsel adverting to page No.113 of the grounds booklet submitted that the arrest memo in Tamil has not been given to the detenu.

6.We had the benefit of perusing the booklet. We also noticed that arrest memo 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 detenu is 9th 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 arrest memo which has been relied on as part of the grounds of detention qua impugned



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detention order is a crucial document and not furnishing 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 25.01.2023 bearing reference No.24/BCDFGISSSV/2023 made by the second respondent is set aside and the detenu Thiru. Rakesh @ Rakki, aged 24 years, Son of Thiru. Rajan 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.)

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Index : Yes/No

Neutral Citation : Yes/No

TK

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



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To

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Secretariat, Fort St. George,
Chennai.
- 2.The Commissioner of Police
Greater Chennai
Chennai District.
- 3.The Superintendent of Prison
Central Prison – Puzhal II
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- 5.The Public Prosecutor
High Court, Madras.



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