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H.C.P.No.355 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.07.2023

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THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

H.C.P.No.355 of 2023

P.Tamilarasan

.. Petitioner

Vs.

1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai – 9.

2.The Commissioner of Police/Detaining Authority,
Avadi City, Avadi.

3.The Superintendent of Prison,
Central Prison, Puzhal, Chennai.

4.The Inspector of Police,
T-15 SRMC Police Station,
Chennai.

..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 connected with the detention order of the second respondent in Memo No.37/BCDFGISSSV/2023 dated 14.02.2023 and quash the same and direct the respondents to produce the body and person of

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petitioner's son namely Macharaja, son of Tamilarasan, aged about 34 years, detained in Central Prison, Puzhal, Chennai, before this Court and set him at liberty forthwith.

For Petitioner : Mr.B.S.Manikandan
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 father of detenu assailing a 'preventive detention order dated 14.02.2023 bearing reference No.37/BCDFGISSSV/2023' [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, fourth 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



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'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] on the premise that the detenu is a 'Goonda' within the meaning of Section 2(f) of Act 14 of 1982.

3. There are three adverse cases. The ground case which constitutes substantial part of substratum of the impugned preventive detention order is Crime No.73 of 2023 on the file of T-15 SRMC Police Station for alleged offences under Sections 341, 294(b), 336, 427, 392, 397 and 506(ii) of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity]. 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.B.S.Manikandan, learned counsel on record for petitioner and Mr.E.Raj Thilak, learned State Additional Public Prosecutor for all



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respondents are before us.

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5. In the support affidavit qua captioned HCP several points have been urged but in the final hearing today, Mr.B.S.Manikandan, learned counsel on record for petitioner in his campaign against the impugned preventive detention order predicated his argument on one point and that one point is subjective satisfaction arrived at by the detaining authority qua imminent possibility of detenu being enlarged on bail is impaired.

6. Elaborating on the above point, learned counsel drew our attention to a portion of paragraph 4 of the grounds of impugned preventive detention order and the same reads as follows:

'4.....In a similar case registered at under Section 294(b), 341, 323, 397, 336, 427 and 506(ii) IPC in J-4 Kotturpuram Police Crime No.43/2018, the bail was granted by the Court of Principal Sessions Judge at Chennai in CrI.M.P.No.1759/2018. Hence, I infer that it is very likely of his coming out on bail in T-15 S.R.M.C. Police Station Crime No.73/2023 since, in a similar case, the bail was granted by the court after a lapse of time and he may come out on bail in T-15 S.R.M.C. Police Station Crime No.29/2023 by producing sufficient sureties....'



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7. The aforementioned CrI.M.P. No.1759 of 2018 shall be referred to as *Aravind's case* as one Aravind is the petitioner therein.

8. Adverting to the grounds booklet and more particularly pages 187 and 188 thereat, learned counsel submitted that *Aravind's case* bail order is in English and translation is incorrect. A portion of *Aravind's case* bail order talks about murder case pending against the petitioner (Aravind) in the year 2012 and another case of the year 2014 but in the Tamil translation it merely says that “ஏற்கனவே கொலை வழக்கு மற்றும் கொலை முயற்சி வழக்கு உள்ளது”. The further details such as years and that the fact that he is on bail in one of the matters have not been mentioned.

9. In response to the aforementioned argument, learned Prosecutor drew our attention to the confession statement of the detenu and submitted that the literacy level of the detenu is fairly high i.e., he is a graduate with a B.Ed., degree.

10. We carefully considered the rival submissions. On the facts



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and circumstances of the case on hand, we find that the improper translation of the *Aravind's case* bail order would certainly baffle the detenu. The detenu being baffled would mean that it will impair his rights to make an effective representation. To be noted, right of a detenu to make an effective representation as against a preventive detention order is a sacrosanct constitutional safeguard ingrained in Article 22(5) of the Constitution of India and we have repeatedly held that infraction of such constitutional right vitiates the impugned preventive detention orders and render them liable to be dislodged on this ground. This order is confined to the case on hand owing to the improper translation. To be noted, we are taking this view owing to the nature of incorrectness in the translation and therefore this cannot be across the bar principle which will serve as a precedent where the literacy level of the detenu is fairly high. In other words, such have to be tested on a case to case basis. In this case, we find that incorrect translation is so baffling that it impairs the sacrosanct constitutional rights of the detenu and the impugned preventive detention order deserves to be dislodged.

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



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detention order dated 14.02.2023 bearing reference No.37/BCDFGISSSV/2023 made by the second respondent is set aside and the detenu Thiru.Macharaja, aged 34 years, son of Thiru.Thamizharasan, 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.)
24.07.2023

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, Puzhal, Chennai.
To

- 1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai – 9.
- 2.The Commissioner of Police/Detaining Authority,
Avadi City, Avadi.
- 3.The Superintendent of Prison,
Central Prison, Puzhal, Chennai.
- 4.The Inspector of Police,
T-15 SRMC Police Station,
Chennai.
- 5.The Public Prosecutor,
High Court, Madras.

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

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