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H.C.P.No.484 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.07.2023

Coram

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

H.C.P.No.484 of 2023

Rose

.. Petitioner

VS

- 1.State of Tamil Nadu rep. By its Secretary,
Home, Prohibition and Excise Department,
Fort St.George, Chennai – 600 009.
- 2.The District Collector and District Magistrate
of Tirupattur, Tirupattur District.
- 3.The Superintendent of Police,
Tirupattur.
- 4.The Superintendent of Prison,
Central Prison, Vellore.
- 5.The Inspector of Police,
Tirupattur Prohibition Enforcement Wing,
Tirupattur 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 of the detention order in C3/D.O.No.5/2023 dated
04.02.2023 on the file of the second respondent and quash the
same and produce the body of the petitioner's husband



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Thiru.Thirupathi, male, S/o.Sivalingam, aged about 33 years, now confined at Central Prison, Vellore, before this Court and set him at liberty.

For Petitioner : Ms.M.Kokila
for Ms.S.Premakumari

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 30.03.2023, this Court made the following order:

'Captioned Habeas Corpus Petition has been filed in this Court on 06.03.2023 inter alia assailing a detention order dated 04.02.2023 bearing reference C3/D.O.No.05/2023 made by 'second respondent' [hereinafter 'Detaining Authority' for the sake of convenience and clarity]. To be noted, fifth respondent is the Sponsoring Authority.

2. To be noted, wife of the detenu is the petitioner.

3. Ms.S.Premakumari, learned counsel on record for habeas corpus petitioner is before us. Learned counsel for petitioner submits that ground case qua the detenu is for alleged offences under Sections 4(1)(aaa), 4(1)(h) and 4(1-A)(ii) of Tamil Nadu Prohibition Act, 1937 in Crime No.08 of 2023 on the file of Tirupathur Prohibition Enforcement Wing.

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-



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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 in spite of the fact that the bail petitions moved by the detenu in the previous case and ground case were dismissed, the detaining authority has come to the conclusion that there is an imminent possibility of the detenu coming out on bail, which reflects non-application of mind.

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 30.03.2023 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 three adverse cases. The ground case which constitutes substantial part of substratum of the impugned preventive detention order is Crime No.08 of 2023 on the file of Tirupathur Prohibition Enforcement Wing for the alleged offences under Sections 4(1)(aaa), 4(1)(h) and 4(1-A)(ii) of Tamil Nadu Prohibition Act, 1937. Owing to the nature of the challenge to the



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impugned preventive detention order, it is not necessary to delve into the factual matrix or be detained further by facts.

4. Ms.M.Kokila, 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. As would be evident from paragraph 5 of the Admission Board order dated 30.03.2023, at the time of admission, the point that there is non-application of mind on the part of detaining authority in arriving at subjective satisfaction qua imminent possibility of detenu being enlarged on bail when the bail petitions moved in adverse case and ground case were already dismissed was projected, however, in the final hearing today, learned counsel for petitioner pivoted her campaign against the impugned preventive detention order on the incorrect/improper translation point. Elaborating on the submission, learned counsel drew our attention to the remand order at page No.127 of the grounds booklet and submitted that it has not been properly translated in Tamil. We had the benefit of perusing the grounds booklet. The remand order dated 05.01.2023 pertaining to ground case at page No.127 of the grounds booklet says '*habitual offenders and they are*



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having many cases similar in nature' whereas 'similar in nature' does not find place in the Tamil translation at page No.129 of the grounds booklet.

6. Learned counsel for petitioner drew our attention to confession statement of the detenu at Page No.72 of the grounds booklet and submitted that the detenu has been doing centering work and the literacy level of the detenu is rather low. We are informed that the detenu is conversant only with Tamil.

7. In this view of the matter, we find that flaw in the translation is very serious and it certainly affects the rights of the detenu to make an effective representation which are rights and constitutional safeguard enshrined in Article 22(5) of the Constitution of India. We remind ourselves of *Powanammal* case which also on facts arose out of the preventive detention case. In *Powanammal* case in similar circumstances i.e., similar fact situation, Honourable Supreme Court addressed to itself the issue of providing a detenu with translated copies in a language in which the detenu is conversant with and answered the same interalia by saying that it is imperative and not providing translated copy in a language which the detenu is conversant with vitiates preventive



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detention. *Powanammal* case i.e., **Powanammal Vs. State of Tamil Nadu** is reported in **(1999) 2 SCC 413** and the relevant paragraphs wherein the question which the Honourable Supreme Court addressed to itself and the manner in which the question was answered are paragraphs 6 and 16 which 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 detainee, 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 detainee be set free forthwith unless she is required to be detained in any other case. The appeal is accordingly allowed. '

8. Applying *Powanammal* principle, we have no hesitation in saying that the impugned preventive detention order in the case on hand deserves to be dislodged.

9. Ergo, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 04.02.2023 bearing reference C3/D.O.No.05/2023 made by the second respondent is set aside



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and the detenu Thiru.Thirupathi, aged 33 years, son of Thiru.Sivalingam, 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.)
31.07.2023

Index : Yes
Neutral Citation : Yes
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P.S: Registry to forthwith communicate this order to Jail authorities in Central Prison, Vellore.

To

- 1.The Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George, Chennai – 600 009.
- 2.The District Collector and District Magistrate
of Tirupattur, Tirupattur District.
- 3.The Superintendent of Police,
Tirupattur.
- 4.The Superintendent of Prison,
Central Prison, Vellore.
- 5.The Inspector of Police,
Tirupattur Prohibition Enforcement Wing,
Tirupattur District.
- 6.The Public Prosecutor,
High Court, Madras.



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

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