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H.C.P.No.390 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.07.2023

Coram

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

H.C.P.No.390 of 2023

S.Sneha

.. Petitioner

VS

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

2.The Commissioner of Police,
Greater Chennai ,
Office of the Commissioner of Police,
Vepery, Chennai.

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

4.The Inspector of Police,
G2 Periyamedu 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 proceedings in No.490/BCDFGISSSV/2022 dated
28.12.2022 and quash the same as illegal and produce the detenu,



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namely Santhosh @ Thavakkalai, S/o.Suresh, aged 23 years, as Goonda, now he is confined in Central Prison, Puzhal II, Chennai, 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 15.03.2023, this Court made the following order:

'Captioned Habeas Corpus Petition has been filed in this Court on 08.03.2023 inter alia assailing a detention order dated 28.12.2022 bearing reference BCDFGISSSV No.490/2022 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.S.Lokesh, learned counsel on record for petitioner is before us. Learned counsel for petitioner submits that ground case qua the detenu is for alleged offences under Sections 341, 294(b), 323, 336, 427, 392, 506(ii) of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] in Crime No.287 of 2022 on the file of G-2, Periyamedu Police Station, Greater Chennai Police.

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-



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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 there is non-application of mind on the part of the detaining authority in arriving at the subjective satisfaction that there is imminent possibility of detenu being released on bail when no bail application was filed by 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. '

2. The aforementioned order made in the 15.03.2023 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 six adverse cases. The ground case which constitutes substantial part of substratum of the impugned detention order is Crime No.287 of 2022 on the file of G-2 Periyamedu Police Station for the alleged offences under Sections 341, 294(b), 323, 336, 427, 392 and 506(ii) of IPC. 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



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facts.

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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.

5. In the Admission Board, the point that the subjective satisfaction arrived at by the detaining authority qua imminent possibility of detenu being enlarged on bail was projected but in the final hearing today, learned counsel for petitioner pivoted his campaign against the impugned detention order on the incorrect/improper translation point. Learned counsel drew our attention to the similar case bail order relied on by the detaining authority in Rajadurai's case vide CrI.M.P.No.2080 of 2019 dated 18.05.2019 on the file of the Judicial Magistrate – I, Poonamallee, at pages 272 and 273 of the grounds booklet and submitted that the bail order has not been fully translated. We had the benefit of perusing the grounds booklet served on the detenu and we have no reason to disagree with the learned counsel for petitioner. A scanned reproduction of the bail order in English and Tamil are as follows:



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'English Version:

IN THE COURT OF THE JUDICIAL MAGISTRATE NO.1, POONAMALLEE
Present: Tmt. R. D. Gurulakshmi M.A.M.L., P.S.D.I. & C.I.
Judicial Magistrate No.11, Poonamallee (J/C)
Dated 18th day of June 2019.
C.I.M.F. No.2383/2019

judicial @ Rajesh, S/o. Pandian

... Petitioner/Arrested.

-Versus-

Part by Sub Inspector of Police,
Vc Aaradi P.S.
Crime No.471/2019
I.S. 379 IPC

... Respondent/Complainant.

This petition is coming today for final hearing in the presence of M/s. M. Arjendran, R. Prasad Advocates for the petitioner and The Assistant Public Prosecutor for the Respondent, after hearing both sides and perusing the material records this Court deliver the following.

ORDER

1.This Petition is filed for bail Under section 407 of Cr.P.C. and petitioner was arrested by the respondent for offence under section 379 IPC.

2. Notice given to respondent and reply received. Heard. The petitioner is in judicial custody from 01.06.2019 for alleged offence under section 379 IPC. The case of the prosecution as against the petitioner is that he had committed the offence under theft.

3.The counsel for the petitioner submitted that the petitioner is innocent and falsely implicated in this case, and the petitioner is ready to furnish sufficient sureties. On the other hand prosecution has raised objection stating that the investigation is not yet completed, he is having previous cases, if he is released on bail, he may be indulge in same kind of offence and abscond.

4. Heard. Records perused. The petitioner is in judicial custody from 01.06.2019. The petitioner was custody in 17 days. The respondent objected to grant a bail due to the investigation is still pending.

5. Hence, considering the facts and circumstances that the petitioner is inside the prison from 01.06.2019, in the interest of justice this petition is allowed on stringent conditions. Petitioner will be released on executing a bond for Rs. 10,000/- together with two sureties of Rs. 5000/- each. Further the petitioner shall appear and sign before the respondent police daily at 10:00 AM for a period of 15 days.

Permit granted by the learned court on this 18th day of June 2019.

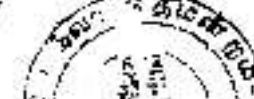


சாட்சி சிவசுப்பிரமணியன்

Correction

Initial

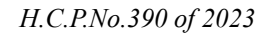
Examined by:



Judicial Magistrate No.11,
Poonamallee (J/C).

By Order
Head Clerk
Judicial Magistrate No.11
Poonamallee

2019/06/18
Tmt. R. D. Gurulakshmi

[illegible]

6. We are informed that the literacy level of the detenu is 7th standard and he is a school drop out. We are also informed that the detenu is conversant only with Tamil.



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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 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 detenue, would vitiate her further detention.



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

9. Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 28.12.2022 bearing reference No.490/BCDFGISSSV/2022 made by the second respondent is set aside and the detenu Thiru.Santhosh @ Thavakkalai, aged 23 years, son of Thiru.Suresh, 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.)
04.07.2023

Index : Yes/No
Neutral Citation : Yes/No
mmi

P.S: Registry to forthwith communicate this order to Jail authorities in Central Prison, Puzhal, Chennai - 66.

To



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

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