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H.C.P.No.391 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.07.2023

Coram

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

H.C.P.No.391 of 2023

Indragandhi

W/o.Ramesh @ Kaviarasu @ Kaviarasan .. Petitioner /Wife of Detenu

VS

1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai – 600 009.

2.The Commissioner of Police
Avadi City, Chennai

3. The Superintendent of Prison,
Central Prison,
Puzhal, Chennai – 66.

4. The Inspector of Police
Anti Vice Squad,
Avadi City.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus calling for the records in connection with the order of Detention passed by the second respondent dated 04.02.2023 in Memo No.27/BCDFGISSSV/2023 against the



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petitioner's husband Ramesh @ Kaviarasu @ Kaviarasan, Male aged 44 years, S/o.Sundharraj, who is confined at Central Prison, Puzhal, Chennai and set aside the same and direct the respondents to produce the detenu before the Hon'ble Court and set him at liberty.

For Petitioner : Ms.M.Kokila
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 before this Court 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 04.02.2023 bearing reference No.27/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. To be noted, wife of the detenu is the petitioner.

3. Ms.M.Kokila, counsel on record for habeas corpus petitioner is before us. Learned counsel for petitioner submits that ground case qua the detenu is for alleged offence under Sections 3(2)(a), 4(1), 5(1)(a), 6(1)(a), 7(1)(a) of 'The Immoral



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Traffic (Prevention) Act, 1956' ['ITP Act' for the sake of brevity] in Crime No.03 of 2023 on the file of Anti Vice Squad, Avadi Police Station.

4. The aforementioned detention order has been made on the premise that the detenu is a 'Immoral Traffic Offender' under Section 2(g) 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 some of the documents in the booklet served on the detenu were not properly translated, which prevented the detenu from making an effective representation.

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.



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3. There is one adverse case and one ground case. The ground case which constitutes substantial part of substratum of the impugned preventive detention order is Crime No.03 of 2023 on the file of Anti Vice Squad for alleged offences under Sections 3(2)(a), 4(1), 5(1)(a), 6(1)(a), 7(1)(a) of 'The Immoral Traffic (Prevention) Act, 1956' [hereinafter 'TTP Act' for 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. Ms.M.Kokila, learned counsel for petitioner and Mr.E.Raj Thilak, learned State Additional Public Prosecutor for all respondents are before us.

5. Ms.M.Kokila, learned counsel for petitioner, in the admission board projected the argument that the documents in the booklet served on the detenu were not properly translated but in the final hearing board, learned counsel predicated her campaign against impugned preventive detention order on one point and that one point turns on supply of illegible copies in the grounds booklet. Elaborating on the submission,



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learned counsel submitted that in pages 63 and 64 of the grounds booklet the lowermost portion are not readable, which prevented the detenu from making an effective representation.

6. The aforementioned point turns heavily on records and therefore learned Additional Public Prosecutor really does not have much of a say.

7. This Court had the benefit of perusing the grounds booklet and this Court is of the view that the aforementioned pages which contains Confession Statement of one Sobanbanu are not readable. Scanned reproduction of pages 63 and 64 are as follows:



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This means that right of the detenu to make an effective representation as against the impugned preventive detention order has been impaired. Such a right is sanctus constitutional right ingrained in Article 22(5) of the Constitution of India. This constitutional right of the detenu has been subjected to infraction. This has vitiated the impugned preventive detention order. Therefore, the impugned preventive detention order is liable to be dislodged.

8. Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 04.02.2023 bearing reference No.27/BCDFGISSSV/2023 made by the second respondent is set aside and the detenu Thiru.Ramesh @ Kaviarasu @ Kaviarasan, aged 44 years, son of Thiru.Sundharraj, 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.



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To

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2. The Commissioner of Police
Avadi City, Chennai
3. The Superintendent of Prison,
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5. The Public Prosecutor,
High Court, Madras.



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

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