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H.C.P.No.410 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.410 of 2023

Selvi

W/o.Kuppuraj

.. Petitioner /Mother of detenu

VS

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

2.The Commissioner of Police,
Chennai City.

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

4. The Inspector of Police,
N-4, Fishing Harbour Police Station.

.. 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 in connection with the order of detention passed by the 2nd respondent dated 11.02.2023 in BCDFGISSSV No.38/2023 against the petitioner's son Thiru.Prasanth, male aged



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about 30 years, Son of Kuppuraj, who is confined at Central Prison, Puzhal, Chennai and set aside the same and direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner : Mr.A.Venkateswara Babu

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 21.03.2023, this Court made the following order:

'Captioned Habeas Corpus Petition has been filed in this Court on 09.03.2023 inter alia assailing a detention order dated 11.02.2023 bearing Ref. No.38/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. *Mother of the detenu is the petitioner.*

3. *Mr.M.Illiyas, 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 294(b) and 307 of 'The Indian Penal Code (45 of*



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1860)' [hereinafter 'IPC' for the sake of convenience and clarity] in Crime No.22 of 2023 on the file of N4 Fishing Harbour 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 grounds that the arrest of the detenu has not been informed to the family members of the detenu and the grounds of detention has not been properly translated in Tamil, 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 21.03.2023 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 are four adverse cases and one ground case. The ground case which constitutes substantial part of substratum of the impugned preventive detention order is Crime No.22 of 2023 on the file of N4 Fishing Harbour Police Station for alleged offences under Sections 294(b) and 307 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.A.Venkateswara Babu, learned counsel for petitioner and Mr.E.Raj Thilak, learned State Additional Public Prosecutor for all respondents are before us.

5. At the time of admission board, the points that the arrest of the detenu has not been informed to the family members of detenu and the grounds of detention has not been properly translated in tamil were projected but in the final hearing, learned counsel for petitioner projected his argument qua challenge to the impugned detention order on one point and that one point turns on incorrect/improper translation. Elaborating on the submission,



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learned counsel drew our attention to page Nos.136 and 137 of the booklet which are (i) Remand order in English and (ii) Remand order in Tamil, respectively. No proper translation of this document has been furnished to the detenu. We had the benefit of perusing the grounds booklet. In the Tamil translation, there is clear mention about 'இலவச சட்ட உதவி' whereas the order in English does not mention anything about 'free legal aid'. There is a world of difference between 'legal aid' and 'free legal aid'. 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.

6. We are informed that the literacy level of the detenu is 8th standard and he is a school drop out. We are also informed that the detenu is conversant only with Tamil.

7. 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



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(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. We find that the aforementioned **Powanammal** case applies in all fours to the case on hand as we find that Remand Order which has been relied on as part of the grounds of detention qua impugned detention order is a crucial document and improper 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.



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9. Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 11.02.2023 bearing reference 38/BCDFGISSSV/2023 made by the second respondent is set aside and the detenu Thiru.Prasanth, aged 30 years, son of Thiru.Kuppuraj 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
Speaking order
Neutral Citation : Yes
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P.S: Registry to forthwith communicate this order to Jail authorities in Central Prison, Puzhal, Chennai.



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

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To

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- 2.The Commissioner of Police,
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