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H.C.P.No.415 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.415 of 2023

Sujatha

W/o.S.Kalidass @ Dillibabu

.. Petitioner /Wife of detenu

VS

1.State of Tamilnadu,
Rep by the Additional Chief Secretary to Government
Home, Prohibition and Excise Department
Fort St. George Chennai – 600 009.

2.The Commissioner of Police,
Tambaram City,
Office of the Commissioner of Police,
Sholinganallur, Chennai – 600 119.

3.The Superintendent of Prison
Central Prison Puzhal,
Chennai – 600 066.

4. The Inspector of Police
T-9, Maraimalai Nagar Police Station
Chengalpattu District.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for
issuance of a writ of habeas corpus calling for the records relating to the



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detention order in Memo No.216/BCDFGISSSV/2022, dated 22.12.2022 passed by the second respondent under the Tamilnadu Act 14 of 1982 and set aside the same and direct the respondents to produce the petitioner's husband S.Kalidass @ Dillibabu, Son of Sundaram, aged about 36 years the detainee, now confined in Central Prison, Puzhal, Chennai before this Court and set the petitioner's husband S.Kalidass @ Dillibabu, S/o.Sundaram aged about 36 years the detainee herein at liberty.

For Petitioner : Mr.A.Saranraj
for Mr.U.Yuvaraj

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 14.03.2023 inter alia assailing a detention order dated 22.12.2022 bearing Ref. BCDFGISSSV No.216/2022 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.*



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3. *Mr.U.Yuvaraj, 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 341, 294(b), 323, 324, 307 and 506(ii) of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] in Crime No.566 of 2022 on the file of T-9 Maraimalai Nagar 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 ground that some of the documents relied upon by the detaining authority are illegible, 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



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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 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.566 of 2022 on the file of T-9 Maraimalai Nagar Police Station for alleged offences under Sections 341, 294(b), 323, 324, 307 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.A.Saranraj, learned counsel representing counsel on record 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 point that some of the pages in the booklet furnished to the detenu are illegible was 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



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incorrect/improper translation. Elaborating on the submission, learned counsel drew our attention to page Nos.377 and 379 of the booklet which are (i) Remand Extension Order dated 16.12.2022 in English and (ii) Remand Extension Order dated 01.12.2022 in Tamil, respectively. No proper translation of this document has been furnished to the detenu.

6. We had the benefit of perusing the booklet. We also noticed that Remand Extension order forms part of the ground on which the impugned detention order has been made. In English version of the Remand Extension order the date was mentioned as 16.12.2022 but in the Tamil translation, the date was mentioned as 01.12.2022. 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.

7. Be that as it may, we are informed that the literacy level of the detenu is 10th standard and he is a school drop out. We are also informed that the detenu is conversant only with Tamil. 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 **(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. Besides improper translation (to be noted, the literacy level of detenu is 10th standard in school and he is a school drop out), the complete difference in dates would also baffle anybody, i.e., complete difference in the English Remand Extension order and the Tamil Remand Extension Order, resulting his impairment of constitutional right to make effective representation against the impugned preventive detention order. We therefore



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have no hesitation in saying that the impugned preventive detention order deserves to be dislodged.

9. Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 22.12.2022 bearing reference No.216/BCDFGISSSV/2022 made by the second respondent is set aside and the detenu Thiru.S.Kalidass @ Dillibabu, aged 36 years, son of Thiru.Sundaram 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
Speaking order/Non-speaking order
Neutral Citation : Yes /No
rsi

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.,**

rsi

To

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Rep by the Additional Chief Secretary to Government
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