



H.C.P.No.505 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.09.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

H.C.P.No.505 of 2023

Sumathi
W/o.Saravanan

.. Petitioner

Vs.

1. The Chief Secretary to Government of Puducherry
Union of Puducherry
Chief Secretariat
Puducherry
2. The Secretary to Lieutenant Governor
Rajnivas, Puducherry
3. The District Magistrate-cum-Authorised Officer
Office of the District Magistrate
1st Floor, Vazhadvhavor Road
Kavundanpalayam
Puducherry – 605 009
4. The Superintendent of Police (East)
Puducherry
5. The Chief Superintendent of Jail

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Central Prison, Kalapet
Puducherry

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6. The Station House Officer
Grand Bazaar Police Station
Puducherry

..Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of direction calling for the records relating to the detention order in No.01/DM/RO/D2/PPASAA/2023 dated 07.02.2023 passed by the 3rd respondent under the Puducherry Prevention of Anti-Social Activities Act, 2008 (Act 10 of 2010) and set aside the same and direct the respondent to produce the petitioner's son Sivaperumal @ Sathiya, son of Saravanan, aged about 27 years, the detenu now confined in Central Prison, Kalapet, Puducherry before this Court and set him at liberty.

For Petitioner : Mr.S.Senthilvel
for Mr.U.Yuvaraj

For Respondents : Mr.K.S.Mohandoss
Public Prosecutor (Puducherry)

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 05.04.2023, this Court made the following order:

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M.SUNDAR, J.,

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and
M.NIRMAL KUMAR, J.,

(Order of the Court was made by M.SUNDAR, J.,)

Captioned Habeas Corpus Petition has been filed in this Court on 15.03.2023 inter alia assailing a detention order dated 07.02.2023 bearing Reference No.01/DM/RO/D2/PPASAA/2023 made by 'third respondent' [hereinafter 'Detaining Authority' for the sake of convenience and clarity]. To be noted, sixth respondent is the Sponsoring Authority.

2. *Mother of the detenu is the petitioner.*

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 450, 342, 395 of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] in Crime No.139 of 2022 on the file of Grand Bazaar Police Station, Puducherry.*

4. *The aforementioned detention order has been made on the premise that the detenu is a 'Dangerous Person' under Section 3(2) of the Puducherry Prevention of Anti-Social Activities Act, 2008.*

5. *The detention order has been assailed inter alia on the ground that certain documents in the booklet furnished to the detenu were not properly translated in Tamil.*

6. *Prima facie case made out for admission. Admit. Issue Rule nisi returnable by four weeks.*



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7. *Mr.K.S.Mohandass, learned Public Prosecutor, Union Territory of Puducherry accepts notice for all respondents. List the captioned Habeas Corpus Petition accordingly.'*

2. The aforementioned Admission Board order dated 05.04.2023 captures all essentials i.e., essentials imperative for appreciating this order and therefore, we are not setting out the same again in this final order.

3. Be that as it may, the 'detention order dated 07.02.2023 bearing reference No.01/DM/RO/D2/PPASSA/2023 made by the Detaining Authority' shall hereinafter be referred to as 'impugned preventive detention order' for the sake of brevity, convenience and clarity. Likewise 'The Puducherry Prevention of Anti-Social Activities Act, 2008 (Act No.10 of 2010)' shall be referred to as 'said Act' for the sake of convenience and clarity.

4. As would be evident from paragraph 5 of the Admission Board order, in the admission hearing, learned counsel posited his challenge to the impugned preventive detention order on the point that certain documents in the booklet furnished to the detenu were not properly translated in Tamil. Elaborating on this point, today Mr.S.Senthilvel, learned counsel

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representing the counsel on record for petitioner submitted that the grounds booklet i.e., the booklet furnished to the detenu consists of the documents which form the basis for grounds of impugned preventive detention order. Learned counsel also points out that in Union Territory of Puducherry, two booklets are supplied to the detenu wherein one contains documents in English and the other contains the documents in regional language i.e., Tamil in this case.

5. Learned counsel drew our attention to a portion of paragraph 5 of the impugned preventive detention order, which reads as follows:

'5.... Further it is learnt that the counter petitioner was remanded into judicial custody at Central Prison, Kalapet concerned in Cr.No.139/2022, u/s.350, 342 and 395 IPC of Grand Bazaar PS. From the additional report of the Petitioner/Superintendent of Police (East) it is learnt that the counter petitioner had filed a bail petition before the Hon'ble Principal Sessions Judge, Puducherry vide Cr.M.P.No.461/2023 for seeking bail and the same is allowed by the Hon'ble Court. Hence, he may be released from the jail at any time after sureties process are over....'

6. Adverting to the aforementioned portion of paragraph 5 of the impugned preventive detention order, learned counsel submitted that the



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bail application and bail petition referred to therein pertains to one of the adverse cases and these are documents which have been relied on by the Detaining Authority for making the impugned preventive detention order.

7. Learned counsel submitted that as per the aforementioned portion of paragraph 5 of the grounds of impugned preventive detention order, alleged offences are Sections 350, 342 and 395 of IPC whereas the bail order talks about Sections 450, 342 and 397 of IPC. Section 397 IPC is not an alleged offence as set out in the grounds of impugned preventive detention order is learned counsel's say. Learned counsel also drew our attention to the bail application and submitted that in the Tamil version of bail application, there is a reference to Section 3421 of IPC (4 digits) which is clearly an error whereas the bail petition filed in English talks about Section 342 IPC.

8. In response to the aforementioned arguments, Mr.K.S.Mohandoss, learned Public Prosecutor for Union Territory of Puducherry submitted that the above are inadvertent typographical errors and the counsel for petitioner is making a mountain out of a molehill.



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9. We carefully considered the rival submissions. We take note of the submission of learned counsel for petitioner that the literacy level of the petitioner is very low i.e., Class VI in school (a school dropout) and the detenu is conversant only with his mother tongue / regional language i.e., Tamil. In this view of the matter, the Tamil translation booklet assumes immense significance. In addition to this, mentioning of different provisions and different CrI.M.P Numbers in Tamil and English booklets would baffle anyone and more so for some one whose literacy level is very low. The consequence / impact is, the right of the detenu to make an effective representation against the impugned preventive detention order is impaired. To be noted, such a right of a detenu is a constitutional safeguard ingrained in Article 22(5) of the Constitution of India and therefore, impairment of the same vitiates the impugned preventive detention order. This Court has repeatedly held that when preventive detention orders are vitiated owing to breach of Article 22(5) safeguard, the same is liable to be dislodged in a habeas legal drill. As a sequitur to the narrative, discussion and dispositive reasoning set out thus far, we have no hesitation in saying that this is one such case.



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10 Ergo, the further sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 07.02.2023 bearing reference No.01/DM/RO/D2/PPASAA/2023 made by the third respondent is set aside and the detenu Thiru.Sivaperumal @ Sathiya, aged 27 years, male, son of Thiru.Saravanan 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.)

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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, Kalapet, Puducherry



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To

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Union of Puducherry
Chief Secretary
Puducherry
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