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H.C.P.No.528 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.06.2023

CORAM

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

H.C.P.No.528 of 2023

Amith Anandh Ajgaonkar (Detenu)

.. Petitioner

Vs

1. The State of Tamil Nadu,
Rep. by its Secretary to Government,
Home, Prohibition and Excise Department,
Chennai-600 009.
- 2.The Commissioner of Police,
Tambaram City,
Office of the Commissioner of Police,
Sholinganallur,
Chennai-119.
- 3.The Superintendent of Prison,
Central Prison, Puzhal,
Chennai-600 066.
- 4.The Inspector of Police,
Entrustment Document Fraud /
Forgery Investigation Wing,
Central Crime Branch,

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Tambaram City Police,
Sholinganallur,
Chennai-600 119.



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.. 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 of the respondent relating to detention order bearing No.02/BCDFGISSSV/2023 dated 23.01.2023 under section 3(1) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Cyber Law Offenders, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Officers, Sexual Offenders, Slum Grabbers and Video Pirates Act, 1982 and to quash the same and to direct the production of the detenu detained in Central Prison, Puzhal, Chennai before this Hon'ble Court and set him at liberty and pass such further or other order as this Hon'ble Court may deem fit and proper in the circumstances of the case and thereby render justice.

For Petitioner : Mr.Dinesh D. Tiwari

For Respondents : Mr.E.Raj Thilak
Additional Public Prosecutor

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ORDER

[Order of the Court was made by **M.SUNDAR, J.,**]

Captioned 'Habeas Corpus Petition' ['HCP' for the sake of brevity] has been filed by the detenu assailing a 'preventive detention order dated 23.01.2023 bearing reference No.02/BGDFGISSSV/2023' [hereinafter 'impugned preventive detention order' for the sake of convenience and brevity]. To be noted, fourth respondent is the sponsoring authority and second respondent is the detaining authority as impugned detention order has been made by second respondent.

2.Impugned preventive detention order has been made under '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] on the premise that the detenu is a 'Goonda' within the meaning of Section 2(f) of Act 14 of 1982.



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3. There is no adverse case. The ground case which is the sole substratum of the impugned preventive detention order is Crime No.119 of 2022 on the file of E9 Thazhambur Police Station (CCB, Tambaram City) for alleged offences under Sections 409, 420, 465, 467, 471 and 120B 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. This Bench heard Mr. Dinesh D. Tiwari, learned counsel for petitioner and Mr. E. Raj Thilak, learned State Additional Public Prosecutor for all respondents. After hearing both sides, this Bench is convinced that the impugned preventive detention order deserves to be set aside. The discussion and dispositive reasoning, i.e., reasons are as follows:

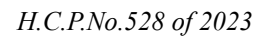
(a) The impugned preventive detention order is dated 23.01.2023 and the same has been served on the detenu on the



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same day (23.01.2023) at 19.50 hours. There is no dispute that 23.01.2023 is the date on which the detenu was detained pursuant to the impugned preventive detention order. To be noted, this is formal arrest as the detenu was already incarcerated from 05.01.2023 having been arrested in the ground case. Section 8(1) of Act 14 of 1982 mandates that the grounds on which the impugned preventive detention order is made should be communicated to the detenu as soon as may be but in any event not later than five days from the date of detention. Five days from the date of detention elapsed on 27.01.2023 but the ground on which the impugned detention order was made has been communicated to the detenu only on 30.01.2023 at 16.40 hours. The seals (rubber stamps) evidencing this aspect of the matter as available in the records before this court are as follows:

[illegible]



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(b)As the above mentioned point turns heavily on the records available before us, learned Prosecutor really does not have much of a say though learned Prosecutor submitted that the grounds of detention have been served as soon as it was possible. We have no hesitation in saying that there is infraction of section 8(1) of Act 14 of 1982. This Court vide ***M.Shylaja Vs. The Additional Chief Secretary to Government and others*** reported in **2023/MHC/193** and series of cases thereafter has repeatedly held that violation of section 8(1) of Act 14 of 1982 is fatal to impugned preventive detention order. This principle applies in all fours to the case on hand and therefore, this point is good enough to dislodge the impugned preventive detention order.

(c)If the impugned preventive detention order deserves to be dislodged on one point, it may not be necessary to examine the other points but as some other points have come to our notice, we continue with the discussion and dispositive



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reasoning.

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(d) It was argued by learned counsel for petitioner that detenu who is a medical Doctor and a Orthopaedic Surgeon is conversant with English and his mother tongue Marathi but grounds booklet containing documents supporting impugned preventive detention order which was served on detenu on 30.01.2023 contains multiple documents in Tamil and the seal evidencing service on 30.01.2023 says that the same was explained to detenu in Tamil. This means that the entire exercise has been carried out in a mechanical manner and in any event several documents in Tamil have not been translated either in English or in Marathi and this by itself is violation of Powanammal principle, i.e., ratio laid down by Hon'ble Supreme Court in **Powanammal Vs. State of Tamil Nadu** reported in (1999) 2 SCC 413. Most relevant paragraphs in **Powanammal** case law 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.

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. '

As regards aforementioned paragraphs, the question which the Hon'ble Supreme Court addressed itself to has been captured in paragraph 6 and the manner in which Hon'ble Supreme Court had answered the same has been set out in paragraph 16.

(e)Learned Prosecutor brought to our notice that a subsequent booklet containing English translations has been



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served on detenu. There is disputation and contestation about the date on which it was served on detenu. Adverting to ground (H) in the support affidavit, learned counsel submitted that this additional booklet was served on the detenu only on 16.02.2023 though dated 08.02.2023. However, the booklet as served on detenu is not before us. Therefore, even if 08.02.2023 is taken as date of service and even if this point is tested on a demurer, it does not save the day qua impugned preventive detention order as that would be far and truly outside the five days statutory prescription vide Section 8(1) of Act 14 of 1982 which has been alluded to and delineated elsewhere supra in this order.

5.In the light of the narrative, discussion and dispositive reasoning set out supra, as already alluded to supra, we have no hesitation in saying that the impugned preventive detention order deserves to be dislodged.

6.Though obvious, at the request of learned counsel for petitioner, we make it clear that legal drill qua this order is testing the impugned



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preventive detention order on habeas corpus jurisprudence principles and therefore, arguments touching upon merits of the ground case was not made.

It is further made clear that all the contentions are left open for detenu, prosecution and all others concerned with the case to be canvassed before trial court.

7.Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 23.01.2023 bearing reference No.02/BCDFGISSSV/2023 made by the second respondent is set aside and the detenu Dr.Amit Anand Ajgaonkar, male, aged 54 years, son of Mr.Ramachandra Ajgaonkar 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.)

16.06.2023

Index : Yes / No

Neutral Citation : Yes / No

Speaking / Non-speaking order

vvk

P.S: Registry to forthwith communicate this order to Jail authorities in

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Central Prison, Puzhal, Chennai.

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To

1. The Secretary to Government,
The State of Tamil Nadu,
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2. The Commissioner of Police,
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Office of the Commissioner of Police,
Sholinganallur,
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Tambaram City Police,
Sholinganallur,
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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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