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HCP No.445 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.06.2023

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THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

H.C.P.No.445 of 2023

Praveen Kumar
S/o.Ramesh

.. Petitioner

Vs.

1. The Secretary to the Government
Home Prohibition and Excise Dept.,
Secretariat
Chennai-600 009.
2. The District Collector and
District Magistrate
Chengalpattu District
Chengalpattu.
3. The Superintendent of Police
Chengalpattu District
Chengalpattu.
4. The Superintendent of Prison
Central Prison, Puzhal
Chennai-66.
5. The Inspector of Police
Thirukazhukundram Police Station
Chengalpattu District.



HCP No.445 of 2023

..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 second respondent dated 08.11.2022 in CPT No.63/2022 against the petitioner's brother-in-law Gowtham @ Multi Sambar, male, aged 22 years, son of Sugumar, who is confined at Central Prison, Puzhal 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	:	Mr.S.Senthilvel
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 24.03.2023, this Court made the following order:

'Captioned Habeas Corpus Petition has been filed in this Court on 17.03.2023 inter alia assailing a detention order dated 08.11.2022 bearing Reference CPT No.63/2022 made by 'second respondent' [hereinafter 'Detaining Authority' for the sake of convenience and clarity]. To be noted, fifth respondent is the Sponsoring Authority.

2. *Brother-in-law of the detenu is the petitioner.*
3. *Ms.M.Kokila, learned counsel on record for*



HCP No.445 of 2023

WEB COPY

habeas corpus petitioner is before us. Learned counsel for petitioner submits that ground case qua the detenu is for alleged offence under Section 379 of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] in Crime No.531 of 2022 on the file of Thirukazhukundram 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 remand order was not properly translated in Tamil and some of the pages in the booklet furnished to the detenu are illegible.*

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 24.03.2023 Admission listing



HCP No.445 of 2023

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.

3. There are two adverse cases and one ground case. The ground case which constitutes substantial part of substratum of the impugned preventive detention order is Crime No.531 of 2022 on the file of Thirukazhukundram Police Station for an alleged offence under Section 379 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.S.Senthilvel, learned counsel on record for petitioner and Mr.E.Raj Thilak, learned State Additional Public Prosecutor for all respondents are before us.

5. Though very many grounds have been raised in the support affidavit, learned counsel for petitioner at the hearing projected his argument qua challenge to the impugned preventive detention order on one point and that point is not providing translated copy of documents (relied on by the detaining authority) in a language which the detenu is conversant with.



HCP No.445 of 2023

Elaborating on the submission, learned counsel drew our attention to page Nos.21, 23, 45, 145 and 217 of the booklet which are Medical Reports, Arrest Intimation Form, Mahazar and similar case bail order in Saalem case. No Tamil translation of these documents have been furnished to the detenu. We had the benefit of perusing the booklet. We also noticed that Medical Reports, Arrest Intimation Form, Mahazar and similar case bail order in Saalem case form part of the ground on which the impugned preventive detention order has been made. 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. Be that as it may, we are informed that the literacy level of the detenu is 10th standard in school 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



HCP No.445 of 2023

and 16 {as in SCC journal} read as follows:

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'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 detainee, 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 detainee be set free forthwith unless she is required to be detained in any other case. The appeal is accordingly allowed. '

7. We find that the aforementioned **Powanammal** case applies in all fours to the case on hand as we find that Medical Reports, Arrest Intimation Form, Mahazar and similar case bail order in Saalem case which have been relied on as part of the grounds of detention qua impugned preventive detention order are crucial documents and not furnishing the same in Tamil the lone language known to the detenu has impaired his constitutional right to make an effective representation of the impugned preventive detention order. It is also to be noted, that Column No.6 in Page No.145 (Mahazar) is fully in English. We therefore have no hesitation in saying that the impugned



HCP No.445 of 2023

preventive detention order deserves to be dislodged.

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8. Before concluding, we also remind ourselves that preventive detention is not a punishment and HCP is a high prerogative writ.

9. Apropos, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 08.11.2022 bearing reference CPT No.63/2022 made by the second respondent is set aside and the detenu Thiru.Gowtham @ Multi Sambar, male, aged 22 years, son of Thiru.Sugumar 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.)
26.06.2023

Index : Yes
Speaking
Neutral Citation : Yes

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P.S: Registry to forthwith communicate this order to Jail authorities in Central Prison, Puzhal, Chennai-66.



WEB COPY



HCP No.445 of 2023

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

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To

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