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H.C.P.No.483 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.07.2023

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

H.C.P.No.483 of 2023

R.Pushpa

.. Petitioner

VS

- 1.The State of Tamil Nadu rep. By
its Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George, Chennai – 600 009.
- 2.The Commissioner of Police,
Tambaram City, Chennai.
- 3.The Superintendent of Prison,
Central Prison, Puzhal, Chennai.
- 4.The Inspector of Police,
T-18 Thazhambur Police Station,
Pallikaranai, Tambaram, Chennai.

.. Respondents

Petition filed under Article 226 of the Constitution of India
praying for issuance of a writ of habeas corpus to call for the entire
records connected with the order of the second respondent herein
in BCDFGISSSV No.179/2022 dated 26.10.2022 and quash the
same and further direct the respondents to produce the body and



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person of the detenu by name Surya, S/o.Rathinavel, aged 25 years, now confined in Central Prison, Puzhal, Chennai before this Court and set him at liberty forthwith.

For Petitioner : Ms.R.Gobika
for Mr.A.Arun

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 29.03.2023, this Court made the following order:

'Captioned Habeas Corpus Petition has been filed in this Court on 21.03.2023 inter alia assailing a detention order dated 26.10.2022 bearing reference BCDFGISSSV No.179/2022 made by 'second respondent' [hereinafter 'Detaining Authority' for the sake of convenience and clarity]. To be noted, fourth respondent is the Sponsoring Authority.

2. Mother of the detenue is the petitioner.

3. Learned counsel for petitioner submits that ground case qua the detenue is for alleged offences under Sections 294(b), 341, 384, 307, 506(ii) and 397 of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] in Crime No.281 of 2022 on the file of Thazhambur Police Station.

4. The aforementioned detention order has been made on the premise that the detenue is a 'Goonda' under Section 2(f) of 'The Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Cyber law offenders, Drug-offenders, Forest-



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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 pages in the booklet furnished to the detenu are not legible 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 29.03.2023

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.

3. There are three adverse cases. The ground case which constitutes substantial part of substratum of the impugned preventive detention order is Crime No.281 of 2022 on the file of T-18 Thazhambur Police Station for the alleged offences under Sections 294(b), 341, 384, 307, 506(ii) and 397 of IPC. 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.



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4. Ms.R.Gobika, learned counsel representing the counsel on record for petitioner and Mr.E.Raj Thilak, learned State Additional Public Prosecutor for all respondents are before us.

5. As would be evident from paragraph 5 of the Admission Board order dated 29.03.2023, at the time of admission, learned counsel for petitioner projected the argument that some of the pages in the grounds booklet furnished to the detenu are not readable and this has impaired the detenu's right to make an effective representation, however, in the Final Hearing Board today, learned counsel representing the counsel on record for petitioner predicated her campaign against the impugned preventive detention order on the point that subjective satisfaction arrived at by the detaining authority qua imminent possibility of detenu being enlarged on bail is impaired.

6. Elaborating on the above submission, learned counsel drew our attention to a portion of paragraph 4 of the grounds of impugned preventive detention order which reads as follows:

'4.....Sankar Nagar P.S. Cr.No.994/2020 u/s 341, 294(b), 397, 307, 506(ii) IPC, bail was granted to the accused Gopi @ Gopisankar by the Principal Sessions Judge of Kancheepuram District at



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Chengalpattu in Crl.M.P.No.3636/2020 on 24.11.2020. Hence, I infer that it is very likely of his coming out on bail in T-18 Thazhambur Police Station Cr.No.281/2022 since in the similarly placed cases, bails were granted by the courts after a lapse of time.....'

7. Learned counsel submitted that aforementioned subjective satisfaction has been arrived at by the Detaining Authority by relying on *Gopi's case* bail order being bail order dated 24.11.2020 in Crl.M.P. No.3636 of 2020 on the file of Principal Sessions Judge, Kancheepuram District at Chengalpattu. Learned counsel advertent to the bail order in *Gopi's case* submitted that the bail order was made in view of directions of Hon'ble Supreme Court in *Suo Motu W.P. (Civil) No.1 of 2020* owing to the 'Corona virus Pandemic and consequent lock down' which shall hereinafter be referred to as 'Covid-19 situation' which cannot be made applicable to the ground case qua bail as on the date of impugned preventive detention order Covid 19 situation had paled into past.

8. In response to the above argument, learned Prosecutor submitted to the contrary and said that the alleged offences in the two orders are broadly comparable.



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9. We had the benefit of perusing the bail order in *Gopi's* case and we find that submission made by learned counsel for petitioner is acceptable. The reason is, a portion of the bail order of learned Sessions Judge in *Gopi's case* reads as follows:

".....Therefore, in obedience to the directions of the Hon'ble Chief Justice of High Court, Madras vide letter dated 21.03.2020 and pursuant to directions of the Hon'ble Supreme Court in Suo Motu W.P (Civil) No.1 of 2020 In Re: Contagion of Covid 19 virus in prisons and also in view of the directions given by the High Power Committee appointed by the Hon'ble Supreme Court of India, New Delhi and also considering the urgent need and necessity to ensure social distancing and thereby reducing the scope of infection, it is essential that the prisons are decongested as much as possible.....' "

10. It is clear that *Gopi's case* bail order is one where bail has been granted primarily owing to the then obtaining Covid-19 situation and orders of Hon'ble Supreme Court in this regard. Therefore, taking *Gopi's case* bail order as a benchmark for arriving at subjective satisfaction qua imminent possibility of detenu being enlarged on bail is clearly a flawed exercise.



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11. Learned counsel predicated her campaign against the impugned preventive detention order on another point and that point is, translated copy of the document relied on by the detaining authority in a language which the detenu is conversant with, has not been furnished to the detenu. Learned counsel for petitioner drew our attention to page Nos.267 and 269 of the grounds booklet which is the similar case bail order dated 24.11.2020 in Cr.M.P.No.3636 of 2020 on the file of Principal Sessions Judge, Kancheepuram District at Chengalpattu. No Tamil translation of this document has been furnished to the detenu. To be noted, we had the benefit of perusing the booklet. We also noticed that the above bail order forms part of the ground on which the impugned preventive detention order has been made.

12. As the aforementioned point turns on obtaining facts which are before us learned State Additional Public Prosecutor really does not have much of a say.

13. Be that as it may 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. We remind ourselves of Powanammal case i.e., **Powanammal Vs.**



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State of Tamil Nadu. The question which Honourable Supreme Court addressed to itself in a similar fact situation is captured in paragraph 6 and the manner in which a Honourable 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 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. '

14. In the case on hand, we find that similar case bail order which has been relied on as part of the grounds of detention qua impugned preventive detention order is a crucial document and not furnishing the same in Tamil, the lone language known to the detenu has impaired his constitutional right to make an effective representation qua the impugned preventive detention order. We therefore have no hesitation in saying that the impugned



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preventive detention order deserves to be dislodged.

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15. Ergo, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 26.10.2022 bearing reference BCDFGISSSV No.179/2022 made by the second respondent is set aside and the detenu Thiru.Surya, aged 25 years, son of Thiru.Rathinavel, 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.)
31.07.2023

Index : Yes
Neutral Citation : Yes
mmi

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

To

- 1.The Secretary to Government,
Home, Prohibition and Excise Department,
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and
R.SAKTHIVEL, J.,**

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5.The Public Prosecutor,
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