



H.C.P.No.497 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.07.2023

CORAM

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

H.C.P.No.497 of 2023

Rajasri

.. Petitioner

Vs

1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George, Chennai – 9.

2.District Collector and District Magistrate,
Tiruvarur District, Tiruvarur.

3.The Superintendent of Police,
Tiruvarur District.

4.The Superintendent,
Central Prison, Tiruchirappalli.

5.The Inspector of Police,
Muthupettai Police Station,
Tiruvarur District.

.. 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
relating to the detention order passed by the second respondent

Page Nos.1/11



H.C.P.No.497 of 2023

pertaining to the order made in C.O.C.No.14/2023 dated 27.02.2023 in detaining the detenu under Section 2(b) of Tamil Nadu Act 14 of 1982 as a Bootlegger and quash the same and direct the respondents to produce the detenu Company Suresh @ Suresh, son of Subramaniayn, aged about 42 years, who is detained at Central Prison, Tiruchirappalli before this Court and set him at liberty.

For Petitioner : Mr.G.Nirmal Krishnan
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 31.03.2023, this Court made the following order:

'Captioned Habeas Corpus Petition has been filed in this Court on 23.03.2023 inter alia assailing a detention order dated 27.02.2023 bearing Reference C.O.C. No.14/2023 made by 'second respondent' [hereinafter 'Detaining Authority' for the sake of convenience and clarity]. To be noted, fifth respondent is the Sponsoring Authority.

2. *Wife of the detenu is the petitioner.*
3. *Mr.G.Nirmalkrishnan, 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*



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H.C.P.No.497 of 2023

offences under Sections 4(1)(aaa), 4(1)(b), 4(1)(h) r/w 4(1-A) of Tamil Nadu Prohibition Act and Sections 420, 465, 468, 471, 472, 328 of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] read with Rules 5 and 7 of Rectified Spirit Rules, 2000 in Crime No.50 of 2023 on the file of Muthupettai Police Station.

4. The aforementioned detention order has been made on the premise that the detenu is a 'Bootlegger' under Section 2(b) 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 the remand order pertaining to ground case has not been translated in Tamil.

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 31.03.2023 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 two adverse cases. The ground case which



H.C.P.No.497 of 2023

constitutes substantial part of substratum of the impugned preventive detention order is Crime No.50 of 2023 on the file of Muthupettai Police Station for alleged offences under Sections 4(1)(aaa), 4(1)(b), 4(1)(h) r/w 4(1-A) of Tamil Nadu Prohibition Act, 1937 and Sections 420, 465, 468, 471, 472, 328 of IPC read with Rules 5 and 7 of Rectified Spirit Rules, 2000. 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.G.Nirmal Krishnan, learned counsel on record for petitioner and Mr.E.Raj Thilak, learned State Additional Public Prosecutor for all respondents are before us.

5. When the matter was taken up, Mr.G.Nirmal Krishnan, learned counsel for petitioner submitted that co-accused in the ground case was also clamped with a preventive detention order, the same was assailed vide HCP No.441 of 2023 and it was allowed by this Court in and by an order dated 24.07.2023. This 24.07.2023 order in HCP No.441 of 2023 reads as follows:

'This order will now dispose of the captioned 'Habeas Corpus



Petition' [hereinafter 'HCP' for the sake of convenience and clarity].

2. When the captioned HCP was listed before this Court 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 16.03.2023 inter alia assailing a detention order dated 27.02.2023 bearing Reference C.O.C.No.13/2023 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.

3. Mr.R.Muruga Bharathi, 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 4(1)(aaa), 4(1)(b), 4(1)(h) read with 4(1-A) of Tamil Nadu Prohibition Act and Sections 420, 465, 468, 471, 472, 328 of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] read with Rules 5 and 7 of Rectified Spirit Rules, 2000 in Crime No.50 of 2023 on the file of Muthupettai Police Station.

4. The aforementioned detention order has been made on the premise that the detenu is a 'Bootlegger' under Section 2(b) 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 arrest of the detenu has not been informed to the family members of the detenu and several 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.'

3. The aforementioned order made in the 24.03.2023 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.

4. 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. 50 of 2023 on the file of Muthupettai Police Station for alleged offences under Sections 4(1)(aaa), 4(1)(b), 4(1)(h) read with 4(1-A) of Tamil Nadu Prohibition Act and Sections 420, 465, 468, 471, 472, 328 of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] read with Rules 5 and 7 of Rectified Spirit Rules, 2000. Owing to the nature of the challenge to the impugned preventive detention order, it is not necessary to delve into the factual



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H.C.P.No.497 of 2023

matrix or be detained further by facts.

5. Mr.R.Muruga Bharathi, learned counsel on record for petitioner and Mr.E.Raj Thilak, learned State Additional Public Prosecutor for all respondents are before us.

6.At the time of Admission i.e., in the admission board, the points that the arrest of the detenu has not been informed to the family members of the detenu and several pages in the booklet furnished to the detenu are illegible were urged but today in the final hearing, Mr.R.Muruga Bharathi, learned counsel for the petitioner predicated his campaign against the impugned preventive detention order on the point that remand order in the ground case being an order dated 10.02.2023 has not been properly translated. In this regard, learned counsel drew our attention to pages 54 and 55 of the grounds booklet furnished to the detenu. Learned counsel pointed out that in the remand order, the offences in the Tamilnadu Prohibition Act, 1937 [hereinafter 'said Prohibition Act' for the sake of brevity] have been mentioned alongside alledged offences under IPC offences. To be noted, alleged offences under said Prohibition Act are Sections 4(1)(aaa), 4(1)(b), 4(1)(h) and 4(1-A) and alleged IPC offences are Sections 420, 465, 468, 471, 472 and 328. Learned counsel drew our attention to the Tamil translation and submits that in Tamil translation said Prohibition Act offences have been mentioned but IPC offences have not been mentioned. Though the literacy level of the detenu has not been mentioned in the confession statement, learned counsel on instructions submits that the literacy level of the detenu is 8th Standard and he is a school dropout.



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H.C.P.No.497 of 2023

Learned counsel also submitted that the detenu is working as a daily wager.

7. As the aforementioned point turns heavily on records, learned Prosecutor really does not have much of a say.

*8. We carefully considered the submissions made by learned counsel for petitioner. As regards incorrect translation, it turns on **Powanammal** principle i.e., **Powanammal Vs. State of Tamil Nadu** reported in (1999) 2 SCC 413. We are convinced that the aforementioned error in the Tamil translation would certainly baffle the detenu. If the detenu is baffled, it means that it impairs the detenu's right to make an effective representation qua impugned preventive detention order, which is the constitutional safeguard ingrained in Article 22(5) of the Constitution of India. As there is impairment of constitutional safeguard, the impugned preventive detention order is vulnerable for being dislodged.*

9. Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 27.02.2023 bearing reference C.O.C.No.13/2023 made by the second respondent is set aside and the detenu Thiru.Neravy Suresh @ Suresh, aged 40 years, son of Thiru.Sudalaimuthu, 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.'

6. There is no disputation that the above point is available for the detenu in the captioned HCP also. This means that impugned



H.C.P.No.497 of 2023

preventive detention order also deserves to be dislodged.

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7. Ergo, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 27.02.2023 bearing reference C.O.C.No.14/2023 made by the second respondent is set aside and the detenu Thiru.Company Suresh @ Suresh, aged 42 years, Son of Thiru.Subramaniam, 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
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P.S: Registry to forthwith communicate this order to Jail authorities in Central Prison, Tiruchirappalli.

To

- 1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George, Chennai – 9.
- 2.The District Collector and District Magistrate,
Tiruvarur District, Tiruvarur.
- 3.The Superintendent of Police,
Tiruvarur District.

Page Nos.9/11



H.C.P.No.497 of 2023

4.The Superintendent,
Central Prison, Tiruchirappalli.

5.The Inspector of Police,
Muthupettai Police Station,
Tiruvarur District.

6.The Public Prosecutor,
High Court, Madras.



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H.C.P.No.497 of 2023

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

mmi

H.C.P.No.497 of 2023

31.07.2023

Page Nos.11/11