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H.C.P.No.509 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.08.2023

CORAM

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

H.C.P.NO.509 OF 2023

Ranjitha
W/o.Raja

.. Petitioner /
Wife of the detenu

VS

- 1.The Secretary to Government
Home, Prohibition and Excise Department
Secretariat
Fort St. George,
Chennai – 600 009
- 2.The District Collector and District Magistrate
Kallakurichi District
Kallakurichi
- 3.The Superintendent of Police
Kallakurichi
Kallakurichi District
4. The Superintendent of Prison
Central Prison – Cuddalore
Cuddalore District
5. State rep. By its



H.C.P.No.509 of 2023

The Inspector of Police
Kallakurichi – PEW Police Station
Kallakurichi District

.. Respondents

PRAYER: 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 petitioner's husband detention under Tamil Nadu Act 14 of 1982 vide detention order dated 08.03.2023 on the file of the second respondent herein made in proceedings Memo D.O.No.C2/03/2023, quash the same as illegal and consequently direct the respondents herein to produce the petitioner's husband namely Raja, son of Kundu Ayyar alias Periyasamy, aged 37 years before this Court and set him at liberty.

For Petitioner : Mr.R.Sasikumar

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] came up for admission on 05.04.2023, this Bench made an order and a scanned reproduction of the same is as follows:

"H.C.P.No.509 of 2023

M.SUNDAR, J.,



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and

M.NIRMAL KUMAR, J.,

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

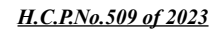
Captioned Habeas Corpus Petition has been filed in this Court on 27.03.2023 inter alia assailing a detention order dated 08.03.2023 bearing Reference D.O. No.C2/03/2023 made by 'second respondent' [hereinafter 'Detaining Authority' for the sake of convenience and clarity]. To be noted, fifth respondent is the Sponsoring Authority.

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

3. *Mr.R.Sasikumar, 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) and 4(1-A) of Tamil Nadu Prohibition Act in Crime No.50 of 2023 on the file of Kallakurichi Prohibition Enforcement Wing.*

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 intimated to the family members of the detenu and some of the pages in the booklet furnished to the detenu are not legible.*



Issue Rule nisi returnable by four weeks.

2. The aforementioned Admission Board order captures essentials
are imperative for appreciating this order and therefore, we are not
g out the same again. However, short forms, short references and
viations used in the Admission Board order will continue to be used
instant order also for the sake of brevity, convenience and clarity.

4.To be noted, 'order dated 08.03.2023 bearing reference D.O.No.C2/03/2023 ' made by second respondent / Detaining Authority shall in this order be referred to as 'impugned preventive detention order' for the sake of convenience and clarity.



H.C.P.No.509 of 2023

5. As would be evident from paragraph 5 of the Admission Board order, at the time of admission learned counsel for petitioner predicated his challenge to the impugned preventive detention order on the points that the arrest of the detenu has not been intimated to the family members of the detenu and some of the pages in the booklet furnished to the detenu are not legible, however in the final hearing board today learned counsel projected his argument qua challenge to the impugned detention order on the point of not providing of translated copy of a document (relied on by the detaining authority) in a language which the detenu is conversant with. Elaborating on the submission, learned counsel drew our attention to pages 108 and 109 of the booklet which is the bail order in similar case relied on by the Detaining Authority. Learned counsel submitted that this has been referred to in the impugned preventive detention order by the Detaining Authority. Relevant portion reads as follows:

".....Hence, there is a real possibility of his coming out on bail by the above case. Since in similar cases bails are granted by the Courts. For example in a similar case, bail was granted to Thiru.Mani alias Manikandan in Crl.O.P.No.9634/2017 dated 17.05.2017 by the High Court of Judicature at Madras for Crime No.271/2017 u/s.4(1-A), 4(1)(aaa) of Tamil Nadu Prohibition Act of Villupuram



H.C.P.No.509 of 2023

Prohibition Enforcement Wing Police Station.....'

No Tamil translation of this document has been furnished to the detenu.

We had the benefit of perusing the booklet. We also noticed that order of the learned single Judge of this Court forms part of the ground on which the impugned 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 IX Standard and he is a school drop out. We are also informed that the detenu is conversant only with Tamil. Relevant portion of the confession statement reads as follows:

'நான் 9-ம் வகுப்பு வரை படித்துள்ளேன்.'

7. 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 and 16 {as in SCC



H.C.P.No.509 of 2023

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 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. '

8. In the case on hand, we find that order of the learned single Judge of this Court which has been relied on as part of the grounds of detention qua impugned detention order is a crucial document and not furnishing translation of the same in Tamil, the lone language known to the detenu has impaired his constitutional right to make an effective representation qua the impugned detention order. We therefore have no hesitation in saying that the impugned detention order deserves to be dislodged.

9. Ergo, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 08.03.2023 bearing reference



H.C.No.509 of 2023

D.O.No.C2/03/2023 made by the second respondent is set aside and the detenu Thiru. Raja, aged 37 years, Son of Thiru.Kundu Ayyar alias Periyasamy 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.)
14.08.2023

Index : Yes

Speaking order

Neutral Citation: Yes

gpa

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



H.C.No.509 of 2023

To

- 1.The Secretary to Government
Home, Prohibition and Excise Department
Secretariat
Fort St. George,
Chennai – 600 009
- 2.The District Collector and District Magistrate
Kallakurichi District
Kallakurichi
- 3.The Superintendent of Police
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5. The Inspector of Police
Kallakurichi – PEW Police Station
Kallakurichi District
- 6.The Public Prosecutor
High Court, Madras.



WEB COPY



H.C.No.509 of 2023

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AND
R.SAKTHIVEL, J.

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H.C.P.NO.509 OF 2023

14.08.2023