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H.C.P.No.508 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.07.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

H.C.P.No.508 of 2023

Preethi

.. Petitioner

Vs.

State rep. By

- 1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Government of Tamil Nadu,
Fort. St. George, Chennai – 600 009.
- 2.The Commissioner of Police,
Avadi City.
- 3.The Superintendent,
Central Prison II, Puzhal, Chennai.
- 4.The Inspector of Police (L & O),
T-3 Korattur Police Station, 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 records pertaining to the order of detention dated 31.01.2023 passed by the second respondent in No.24/BCDFGISSSV/2023 and quash the same as illegal and direct the respondents to produce the detenu Surya @

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Tsunami Surya, S/o.Mani, male, aged about 24 years, now confined at Central Prison II, Puzhal, Chennai before this Court and set him at liberty.

For Petitioner : Mr.S.Senthil Kumar
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 03.04.2023, this Court made the following order:

'Captioned Habeas Corpus Petition has been filed in this Court on 27.03.2023 inter alia assailing a detention order dated 31.01.2023 bearing reference Memo No.24/BCDFGISSSV/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. To be noted, wife of the detenu is the petitioner.

3. Mr.S.Senthil Kumar, 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 341, 294(b), 323, 336, 427, 397 and 506(ii) of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] in Crime No.646 of 2022 on the file of T-3 Korattur 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



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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 in spite of the fact that the detenu has not moved any bail application, the detaining authority has come to the conclusion that there is an imminent possibility of the detenu coming out on bail, which reflects non-application of mind.

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 03.04.2023 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 constitutes substantial part of substratum of the impugned preventive detention order is Crime No.646 of 2022 on the file of T-3 Korattur Police Station for the alleged offences under Sections 341, 294(b), 323, 336, 427, 397 and 506(ii) of IPC. Owing to the nature of the



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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.Senthil Kumar, 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 the Admission Board order dated 03.04.2023, at the time of admission, learned counsel for HCP petitioner projected the point that there is non-application of mind on the part of the detaining authority in arriving at subjective satisfaction as regards the imminent possibility of the detenu being enlarged on bail as the detenu has not moved any bail application, but in the Final Hearing Board today, learned counsel for petitioner pivoted his campaign against the impugned detention order on the incorrect/improper translation point. Learned counsel drew our attention to the similar case bail order relied on by the detaining authority in Aravind's case vide CrI.M.P.No.1759 of 2018 dated 01.02.2018 on the file of the Principal Sessions Judge, Chennai, at



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pages 76 and 77 of the grounds booklet and submitted that the bail order has not been fully translated. We had the benefit of perusing the grounds booklet served on the detenu and we have no reason to disagree with the learned counsel for petitioner. English version of bail order dated 01.02.2018 says '*Major portion of investigation might have been completed by this time. The murder case pending against the petitioner is of the year 2012 and another case of the year 2014...*' whereas the Tamil version says 'இவர் மீது ஏற்கனவே கொலை வழக்கு மற்றும் கொலை முயற்சி வழக்கு உள்ளது and it also says விசாரணை முழுமையாக முடிவு பெற்றுள்ளதால்...'

6. We are informed that the literacy level of the detenu is 5th standard and he is a school drop out. We are also informed that the detenu is conversant only with Tamil.

7. In this view of the matter, we find that flaw in the translation is very serious and it certainly affects the rights of the detenu to make an effective representation which are rights and constitutional safeguard enshrined in Article 22(5) of the Constitution of India. We remind ourselves of *Powanammal* case which also on facts arose out of



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the preventive detention case. In *Powanammal* case in similar circumstances i.e., similar fact situation, Honourable Supreme Court addressed to itself the issue of providing a detenu with translated copies in a language in which the detenu is conversant with and answered the same interalia by saying that it is imperative and not providing translated copy in a language which the detenu is conversant with vitiates preventive detention. *Powanammal* case i.e., **Powanammal Vs. State of Tamil Nadu** is reported in **(1999) 2 SCC 413** and the relevant paragraphs wherein the question which the Honourable Supreme Court addressed to itself and the manner in which the question was answered 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. '



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8. Applying *Powanammal* principle, we have no hesitation in saying that the impugned preventive detention order in the case on hand deserves to be dislodged.

9. Ergo, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 31.01.2023 bearing reference No.24/BCDFGISSSV/2023 made by the second respondent is set aside and the detenu Thiru.Surya @ Tsunami Surya, aged 24 years, son of Thiru.Mani, 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.)
10.07.2023

Index : Yes / No
Neutral Citation : Yes / No
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P.S. Registry to forthwith communicate this order to Jail authorities in Central Prison, Puzhal, Chennai.

To

1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Government of Tamil Nadu,
Fort. St. George, Chennai – 600 009.

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- 2.The Commissioner of Police,
Avadi City.
- 3.The Superintendent,
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- 4.The Inspector of Police (L & O),
T-3 Korattur Police Station, Chennai.
- 5.The Public Prosecutor,
High Court, Madras.



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

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