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H.C.P.No.560 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.560 OF 2023

Shobana

.. Petitioner

VS

1.The Secretary to Government
Government of Tamil Nadu
Home, Prohibition and Excise Department
Fort St. George, Chennai.

2.The District Collector and District Magistrate
Vellore District,
Vellore – 9.

3.The Superintendent of Police
Vellore District,
Vellore.

4.The Superintendent
Central Prison
Vellore, Vellore District.

5.The Inspector of Police
Gudiyatham Town Police Station
Gudiyatham,
Vellore District.

.. Respondents



H.C.P.No.560 of 2023

PRAAYER: 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 impugned order C3/D.O.No.13/2023 dated 23.02.2023 on the file of the second respondent herein and set aside the same as illegal and direct the respondents to produce namely Sampath son of Srinivasan, aged about 58 years, now confined at Central Prison, Vellore, before this Court and set him at liberty.

For Petitioner : Mr.G.Vinodhkumar

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 12.04.2023, this Bench made an order and a scanned reproduction of the same is as follows:



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M.SUNDAR, J.,

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 03.04.2023 *inter alia* assailing a detention order dated 23.02.2023 bearing reference CWD.O.No.13/2023 made by 'second respondent' [hereinafter 'Detaining Authority' for the sake of convenience and clarity]. To be noted, fifth respondent is the Sponsoring Authority.

2. Daughter of the detenu is the petitioner.

3. Mr.G.Vinodhkumar, learned counsel on record for petitioner is before us. Learned counsel for petitioner submits that ground case qua the detenu was initially registered for an offence under Sections 4(i)(i), 4(i)(aaa), 4(1-A)(ii) of Tamil Nadu Prohibition Act, 1937 read with Section 328 of "The Indian Penal Code (45 of 1860)" [hereinafter "IPC" for the sake of convenience and clarity] in Crime No.09 of 2023 on the file of Gudiyatham Town 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

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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 'live and proximate link' between the grounds of detention and purpose of detention had snapped as there is a delay in passing the detention order.

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.


[M.S.J.]


[M.N.K.J.]

12.04.2023

cse



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2.The aforementioned order made in the 12.04.2023

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 nine adverse cases. The ground case which constitutes part of substratum of the impugned preventive detention order is Crime No.09 of 2023 on the file of Gudiyatham Town Police Station for alleged offences under Sections 4(1)(i), 4(1)(aaa), 4(1-A)(ii) of Tamil Nadu Prohibition Act, 1937, read with 328 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.

4.Mr.G.Vinodhkumar learned counsel on record for petitioner and Mr.E.Raj Thilak, learned State Additional Public Prosecutor for all respondents are before us.

5.At the time of admission, though the point that 'live and proximate link' between the grounds of detention and purpose of



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detention had snapped as there is a delay in passing the detention order has been raised, in the final hearing, learned counsel for petitioner projected his argument qua challenge to the impugned preventive detention order on one point and that one point turns on not providing translated copy of a document (relied on by the detaining authority) in a language which the detenu is conversant with. Learned counsel for petitioner drew our attention to a portion of paragraph 5 of the impugned preventive detention order which reads as follows:

'5...As far as the ground case is concerned, in a similar case registered at Vellore Prohibition Enforcement Wing Cr.No.187/2021, U/s.4(1)(i), 4(1)(aaa), 4(1-A)(ii) Tamil Nadu Prohibition Act r/w 328 IPC, bail was granted by the Principal Sessions Court, Vellore in Crl.M.P.No.1206/2021 to one Thiru. Sundar on 20.04.2021. As bails are being granted by courts in such cases, there is real possibility that he (Thiru. Sampath) would be coming out of bail, by above pending bail application in the court...'

6. Thereafter, learned counsel placed before us the grounds booklet as served on the detenu and drew our attention to page Nos.118



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and 120 thereat which were ***Sundar case*** bail order (similar case) made in English by the learned Sessions Judge and what according to the Detaining Authority is Tamil translation version. On a perusal of the bail order in English and the Tamil translated version brings to light that the bail order in English refers to pending cases against the petitioner but in the Tamil translation the same is missing.

7.As this turns on obtaining facts which are before us learned State Additional Public Prosecutor does not have much of a say.

8.We carefully considered the rival submissions. We find from the confession statement of the detenu at page Nos.79 and 80 of the grounds booklet that the detenu is not educated and the relevant portion reads as under:

'...நான் படிக்கவில்லை. நான் முதலில் கூலி வேலை செய்து வந்தேன்...'

9.We had the benefit of perusing the booklet. We also noticed that similar case bail order forms part of the ground on which the impugned preventive detention order has been made. As this turns on



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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.

10.Be that as it may, we are informed that the detenu is not educated. 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 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 detenue, would vitiate her further detention.



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

11. 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 detention order is a crucial document and not furnishing proper 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.

12. Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 23.02.2023 bearing reference No.C3/D.O.No.13/2023 made by the second respondent is set aside and the detenu Thiru. Sampath, aged 58 years, Son of Thiru. Srinivasan is directed to be set at liberty forthwith, if not required in connection with



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any other case / cases. There shall be no order as to costs.

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(M.S., J.)

(R.S.V., J.)

31.07.2023

Index : Yes

Neutral Citation : Yes

Speaking

TK

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



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To

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- 6.The Public Prosecutor
High Court, Madras.



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M.SUNDAR, J.
AND
R.SAKTHIVEL, J.

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