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H.C.P.No.571 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.571 OF 2023

Mrs.S.Vijayalakshmi

.. Petitioner

VS

1.The Secretary to the Government
Home, Prohibition and Excise Department
Secretariat
Chennai – 600 009.

2.The Commissioner of Police
Avadi City, Avadi
Chennai – 600 054

3.The Superintendent
Central Prison, Puzhal
Chennai

4.The Inspector of Police (Crime)
T-11, Thiruninravur Police Station
Thiruninravur, Chennai

.. 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 detention order passed by the 2nd respondent vide



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BCDFGISSSV No.26/2023 dated 31.01.2023 against my husband M.Sankarapandian alias Pandian/detenu (male/aged 48) and set aside the same and consequently direct the respondents to produce the detenu before this Court, now he is detained at Central Prison, Puzhal, Chennai and set him at liberty.

For Petitioner : Mr.D.Vijayan

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 17.04.2023, this Court made the following order:

' Captioned Habeas Corpus Petition has been filed in this Court on 03.04.2023 inter alia assailing a detention order dated 31.01.2023 bearing reference No.26/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. Wife of the detenu is the petitioner.

3. Learned counsel for petitioner submits that ground case qua the detenu is for alleged offences under Sections 341, 294(b), 323, 397 and 506(ii) of 'The Indian



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Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] in Crime No.08 of 2023 on the file of T 11 Thirunindravur 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 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 some of the pages in the grounds 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 17.04.2023 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.



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3. There are four adverse cases and one ground case. The ground case which constitutes part of substratum of the impugned preventive detention order is Crime No.08 of 2023 on the file of T-11 Thirunindravur Police Station for alleged offences under Sections 341, 294(b), 323, 397 and 506(ii) 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.D.Vijayan, learned counsel on record for petitioner and Mr.E.Raj Thilak, learned State Additional Public Prosecutor for all respondents are before us.

5. To be noted, 'order dated 31.01.2023 bearing reference No.26/BCDFGISSSV/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.

6. As would be evident from paragraph 5 of the Admission Board order, at the time of admission learned counsel for petitioner predicated



his argument that some of the pages in the grounds booklet furnished to the detenu are not legible which prevented the detenu from making an effective representation, however in the final hearing today learned counsel predicated his campaign against the impugned preventive detention order on the ground that the subjective satisfaction arrived at by the Detaining Authority qua imminent possibility of detenu being released on bail is impaired.

7.Elaborating on the aforementioned point on subjective satisfaction, learned counsel for petitioner drew our attention to a portion of paragraph 4 of the impugned preventive detention order which reads as follows:

'4...In a similar case registered at under section 294(b), 341, 323, 397, 336, 427 and 506(ii) IPC, in J-4 Kotturpuram Police Station Crime No.43/2018, the bail was granted by the Court of Principal Sessions Judge at Chennai in Crl.M.P.no.1759/2018. Hence, I infer that it is very likely of his coming out on bail in T-11 Thirunindravur Police Station Crime Nos.148/2021, 05/2023 and 07/2023 and also there is a real possibility of his coming out on bail in T-9, Pattabiram Police Station Cr.No.306/2022 and T-11 Thirunindravur Police Station Cr.No.08/2023 by filing bail application before the appropriate



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court, since in similar case bail is granted by the court after a lapse of time.'

8. Thereafter, learned counsel placed before us the grounds booklet as served on the detenu and drew our attention to page Nos.183 to 187 thereat which were **Aravind case** bail order (similar case) made in English by the learned Sessions Judge and what according to the Detaining Authority's Tamil translation version furnished to the detenu. 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 with specificity as regards years in paragraph 5 but in the Tamil translation the same is missing.

9. Learned Prosecutor in response to the above arguments submitted that only the mentioning of the years of pending cases with specificity is missing but otherwise the translation is largely correct.

10. We carefully considered the rival submissions. We find from the confession statement of the detenu at page No.54 of the grounds booklet that the literacy level of the detenu is only 10th Standard in School. Therefore, it is not merely a case of improper translation it is also a case of giving orders with different contents in English and Tamil



version which can baffle a person whose literacy level is only 10th Standard in School. This means that when a detenu is baffled, his right to make an effective representation against the impugned preventive detention order gets impaired.

11. We also 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 detenu, 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 detenu be



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

12. Therefore, this is a case of improper translation as well as providing documents with different contents in two different languages impairing the detenu's right to make an effective representation. The net sequitur is the impugned preventive detention order is vitiated and the same deserves to be dislodged.

13. Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 31.01.2023 bearing reference No.26/BCDFGISSSV/2023 made by the second respondent is set aside and the detenu Thiru. Sankarapandian @ Pandian, aged 48 years, Son of Thiru. Maylery Nadar 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
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P.S: Registry to forthwith communicate this order to Jail authorities in Central Prison, Puzhal, Chennai.



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To

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Home, Prohibition and Excise Department
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R.SAKTHIVEL, J.

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