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HCP No.610 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.08.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

H.C.P.No.610 of 2023

Kaveri
W/o.Kumar

.. Petitioner

Vs.

1. State rep. by Secretary to Government
Home, Prohibition and Excise Department
Secretariat
Chennai-600 009.
2. The District Collector and
District Magistrate
Tiruvannamalai
Tiruvannamalai District.
3. The Superintendent of Prison
Special Prison for Women
Thorapadi, Vellore.
4. The Superintendent of Police
Tiruvannamalai
Tiruvannamalai District.
5. The Inspector of Police
Polur PEW Police Station
Polur, Tiruvannamalai District.



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..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 in D.O.No.34/2023-C2 passed by the second respondent on 17.03.2022, set aside the same and direct the respondents to produce the detenu Santhi, wife of Late Manogaran, aged 59 years, who is now detained in Special Prison for Women, Vellore before this Hon'ble Court and set her at liberty.

For Petitioner : Mr.R.Ganesh
representing Ms.S.Nishanthi
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 18.04.2023, this Court made the following order:

'Captioned Habeas Corpus Petition has been filed in this Court on 05.04.2023 inter alia assailing a detention order dated 17.03.2023 bearing reference D.O.No.34/2023-C2 made by 'second respondent' [hereinafter 'Detaining Authority' for the sake of convenience and clarity]. To be noted, fifth respondent is the Sponsoring Authority.

2.Sister-in-law of the detenu is the petitioner.

3.Learned counsel for petitioner submits that ground case qua the detenu was initially registered for an offence under Sections



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4(1)(aaa) read with 4(1-A)ii of Tamil Nadu Prohibition Act, 1937 in Crime No.170 of 2023 on the file of Polur 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 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.'

2. The aforementioned order made in the 18.04.2023 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



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Admission listing shall be used in the instant order also.

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3. There are three adverse cases and one ground case. The ground case which constitutes substantial part of substratum of the impugned preventive detention order is Crime No.170 of 2023 on the file of Polur Prohibition Enforcement Wing for alleged offences under Sections 4(1)(aaa) read with 4(1-A)(ii) of 'the Tamil Nadu Prohibition Act, 1937' [hereinafter 'TNP Act' for the sake of brevity, convenience and clarity]. 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.R.Ganesh, 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 18.04.2023, at the time of admission, learned counsel for HCP petitioner projected 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



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the impugned preventive detention order, but in the Final Hearing Board today, learned counsel for petitioner pivoted his campaign against the impugned preventive detention order on one point and that point is not providing translated copy of a document (relied on by the detaining authority) in a language which the detainee is conversant with. Elaborating on the submission, learned counsel drew our attention to page No.47 of the booklet which is remand order dated 09.02.2023. No Tamil translation of the above document has been furnished to the detainee. We had the benefit of perusing the booklet. We also noticed that the remand order dated 09.02.2023 forms part of the ground on which the impugned preventive 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 the detainee is unlettered. We are also informed that the detainee is conversant only with Tamil. Relevant portion of the confession is in Page No.37 of the grounds booklet and the same reads as follows:

'....நான் படிக்கவில்லை....'

7. We remind ourselves of Powanammal case i.e., **Powanammal Vs.**



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

8. We find that the aforementioned **Powanammal** case applies in all fours to the case on hand as we find that the remand order dated 09.02.2023 which has been relied on as part of the grounds of detention qua impugned preventive detention order is a crucial document and not furnishing the same



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in Tamil the lone language known to the detenue has impaired her constitutional right to make an effective representation of the impugned preventive detention order. We therefore have no hesitation in saying that the impugned preventive detention order deserves to be dislodged.

9. Before concluding, we also remind ourselves that preventive detention is not a punishment and HCP is a high prerogative writ.

10. Apropos, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 17.03.2022 (to be noted, in English version of grounds of detention and Tamil version of impugned preventive detention order and grounds of detention, the date is mentioned as 17.03.2023) bearing reference D.O.No.34/2023-C2 made by the second respondent is set aside and the detenue Tmt.Santhi, Female, aged 59 years, wife of Thiru.Manogaran, 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.)
04.08.2023

Index : Yes
Speaking
Neutral Citation : Yes

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

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

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To

1. State rep. by Secretary to Government
Home, Prohibition and Excise Department
Secretariat
Chennai-600 009.
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