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H.C.No.588 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.588 OF 2023

Rubana

.. Petitioner

VS

- 1.The State of Tamilnadu
Rep. By the Additional Chief Secretary to Government
Home, Prohibition and Excise Department
Fort St. George,
Chennai – 600 009
- 2.The Commissioner of Police
The Greater Chennai City
Office of the Commissioner of Police
Vepery, Chennai – 600 007
- 3.The Superintendent of Prison
Central Prison
Puzhal, Chennai- 600 066
4. The Deputy Commissioner of Police
Office of the Deputy Commissioner of Police
Kolathur, Chennai
- 5.The Inspector of Police
M-1, Madhavaram Police Station



Chennai



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.. Respondents

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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 in Memo No.20/BCDFGISSSV/2023 dated 12.01.2023 passed by the 2nd respondent under Tamil Nadu Act 14 of 1982 and set aside the same and direct the respondents to produce the petitioner's husband Mohammed Akthar, son of Mohammed Thabir, aged about 26 years, the detenu now confined in Central Prison, Puzhal, Chennai before this Court and set the petitioner's husband at liberty.

For Petitioner : Mr.S.Senthilvel
for Mr.R.Murugan

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 17.04.2023, this Bench made an order and a scanned reproduction of the same is as follows:

'H.C.P.No.588 of 2023

M.SUNDAR, J.
and



H.C.No.588 of 2023

R.SAKTHIVEL, J.

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

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Captioned Habeas Corpus Petition has been filed in this Court on 05.04.2023 inter alia assailing a detention order dated 12.01.2023 bearing reference No.20/BCDFGISSSV/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. Learned counsel for petitioner submits that ground case qua the detenu is for alleged offences under Sections 342, 323 and 324 of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] and Section 75 of Juvenile Justice (Care and Protection of Children) Act, 2015 in Crime No.728 of 2022 on the file of M1 Madhavaram 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 illegible which prevented the detenu from making



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

3.Mr.S.Senthilvel, 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.

4.To be noted, 'order dated 12.01.2023 bearing reference No.20/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.

5. As would be evident from paragraph 5 of the Admission Board



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order, at the time of admission learned counsel for petitioner predicated his challenge to the impugned preventive detention order on the point that some of the pages in the grounds booklet furnished to the detenu are illegible which prevented the detenu from making an effective representation, however in the final hearing board today learned counsel advertent to index to grounds booklet submitted that Hindi translation of all documents in grounds booklet were given but as regards the index consisting of 191 documents running to 547 pages, the same has been given only in Tamil.

6. Learned counsel drew our attention to page Nos.1 to 15, which contain index to grounds booklet in Tamil. On a perusal of the pages 1 to 15 brings to light that the same is in Tamil and Hindi translation of the same has not been given to the detenu.

7. We carefully considered the rival submissions. We find from the confession statement of the detenu at page No.203 of the grounds booklet that the detenu is conversant only with Arabi/Urudu and the relevant portion of the confession reads as under:

'நான் சிறுவயதில் இருந்தே அரபி உருது



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ஆகியவைகளை படித்து வந்தேன். பின்



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குஜராத்தில் உள்ள தூதர் சோபிபாக் என்ற
பள்ளியில் மூன்று வருடங்களாக முறையாக
உருது அரபி படித்து முத்துவள்ளியாக
ஆனேன்.....'

8.We had the benefit of perusing the grounds booklet. We also noticed that index to the grounds booklet is in Tamil, which contains list of documents relied on by the Detaining Authority in making the impugned preventive detention order. As this turns on obtaining scenario which comes to light from the grounds booklet which is before us, learned State Additional Public Prosecutor does not have much of a say.

9. Be that as it may, we are also informed that the detenu is conversant only with Hindi. We remind ourselves of ***Powanammal*** case i.e., ***Powanammal Vs. State of Tamil Nadu***, wherein Hon'ble Supreme Court addressed to itself this translation point in a similar fact situation. The question which the Hon'ble Supreme Court addressed to itself is captured in paragraph 6 and the manner in which Hon'ble Supreme Court answered this question have been 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:



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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. '

10.In the case on hand, we find that index which contains list of documents relied on by the detaining authority in passing the impugned preventive detention order is a crucial document and not furnishing proper translation of the same in Hindi, the lone language known to the detenu, has impaired his constitutional right ingrained in Article 22(5) to make an effective representation qua the impugned preventive detention order. We therefore have no hesitation in saying that the impugned preventive detention order deserves to be dislodged.

11. Ergo, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 12.01.2023 bearing reference 20/BCDFGISSSV/2023 made by the second respondent is set aside and



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the detenu Thiru. Mohamed Akthar, aged 26 years, Son of Thiru.Mohammed Thabir 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

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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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- 2.The Commissioner of Police
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- 6.The Public Prosecutor
High Court, Madras.



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AND
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