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HCP No.616 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.07.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

H.C.P.No.616 of 2023

M.Abitha Banu
W/o.Mohammed Musthafa

.. Petitioner

Vs.

1. The Government of Tamil Nadu
Rep. by its Additional Secretary
Home, Prohibition Excise Department
Fort St.George
Chennai-600 009.
2. The Commissioner of Police
Avadi City,
Chennai.
3. The Inspector of Police
M-6, Manali Police Station
Chennai.
4. The Superintendent of Police
Central Prison, Puzhal
Chennai-600 066.

..Respondents



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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 Memo No.211/BCDFGISSSV/2022 dated 31.12.2022 on the file of the 2nd respondent herein and quash the same and direct the respondents herein to produce the body of petitioner's son Mohammed Azarudeen @ Bhagavan, aged 24 years, the detenu now confined in Central Prison, Puzhal, before this Hon'ble Court and set him at liberty.

For Petitioner : Mr.A.Vijayasankar
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 19.04.2023, this Court made the following order:

'Captioned Habeas Corpus Petition has been filed in this Court on 06.04.2023 inter alia assailing a detention order dated 31.12.2022 bearing reference No.211/BCDFGISSSV/2022 made by 'second respondent' [hereinafter 'Detaining Authority' for the sake of convenience and clarity]. To be noted, third respondent is the Sponsoring Authority.

2. To be noted, mother of the detenu is the petitioner.

3. Mr.A.Vijayasankar, learned counsel on record for habeas corpus petitioner is before us. Learned counsel for petitioner submits that ground case qua the detenu is for



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alleged offences under Sections 341, 294(b), 336, 427, 392, 397 and 506(ii) of 'Indian Penal Code, 1860 (Act 45 of 1860)' ['IPC' for brevity] in Crime No.470 of 2022 on the file of M-6, Manali 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 blood relatives of the detenu were not informed about the detention.

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 19.04.2023 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 six adverse cases. The ground case which constitutes substantial part of substratum of the impugned preventive detention order is Crime No.470 of 2022 on the file of M-6 Manali Police Station for alleged offences under Sections 341, 294(b), 336, 427, 392, 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.A.Vijayasankar, learned 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 19.04.2023, at the time of admission, learned counsel for HCP petitioner projected the point that blood relatives of the detenu were not informed about the detention, but in the Final Hearing Board today, learned counsel for petitioner pivoted his campaign against the impugned preventive detention order on the incorrect/improper translation point. Learned counsel drew our attention to the similar case bail order relied on by the detaining



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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 pages 215 and 216 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 6th 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



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Article 22(5) of the Constitution of India. We remind ourselves of **Powanammal** case which also on facts arose out of 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 *inter alia* 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



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is required to be detained in any other case. The appeal is accordingly allowed. '

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. 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 31.12.2022 bearing reference No.211/BCDFGISSSV/2022 made by the second respondent is set aside and the detenu Thiru.Mohammed Azarudeen @ Bhagawan, male, aged 24 years, son of Thiru.Mohammed Mustafa, 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.)
18.07.2023

Index : Yes
Speaking
Neutral Citation : Yes
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P.S: Registry to forthwith communicate this order to Jail authorities in Central Prison, Puzhal, Chennai.

M.SUNDAR, J.,



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and
R.SAKTHIVEL, J.,

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To

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Rep. by its Additional Secretary
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Chennai-600 009.
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