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H.C.P.No.638 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.09.2023

CORAM

**THE HONOURABLE MR.JUSTICE M.SUNDAR
AND
THE HONOURABLE MR.JUSTICE R.SAKTHIVEL**

H.C.P.NO.638 OF 2023

D.Mala

.. Petitioner

VS

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

2.The Commissioner of Police
Office of the Commissioner of Police
Avadi

3.The Superintendent of Police
Central Prison
Puzhal, Chennai.

4. The Inspector of Police
T-12, Poonamallee Police Station
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 of



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pertaining to the order of detention passed by the second respondent in his proceedings in No.69/BCDFGISSSV/2023 dated 18.03.2023 and quash the same as illegal and produce the detenu namely Vishwa @ Scale, son of Duraisamy, aged 22 years, who is now confined in Central Prison, Puzhal, Chennai, before this Court and set him at liberty.

For Petitioner : Mr.S.Lokesh

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 24.04.2023, this Court made the following order:

'Captioned Habeas Corpus Petition has been filed in this Court on 11.04.2023 inter alia assailing a detention order dated 18.03.2023 bearing reference 69/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. To be noted, mother of detenu is the petitioner.

3. Mr.C.Raja, learned counsel on record for habeas corpus petitioner is before us. Learned counsel for petitioner submits that ground case qua the detenu is for alleged offences under Sections 341, 294(b), 336, 392, 397 and 506(ii) of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake



of convenience and clarity] in Crime No.116 of 2023 on the file of T-12, Poonamalle 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 the detenu has not moved any bail application and hence, the subjective satisfaction arrived at by the detaining authority regarding real possibility of detenu coming out on bail reflects non-application of mind.

6. Prima facie case made out for admission. Admit. Issue Rule nisi returnable by four weeks.

7. Mr.E.Raj Thilak, 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 all essentials that are imperative for appreciating this order and therefore, we are not setting out the same again in this order. Suffice to say that aforementioned Admission Board order shall be read as an integral part and parcel of this order. Be that as it may, we are using the short forms,



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short references and abbreviations used in the Admission Board in this order also for the sake of convenience and clarity. To be noted, 'detention order dated 18.03.2023 bearing reference 69/BCDFGISSSV/2023 made by the Detaining Authority' shall hereinafter be referred to as 'impugned preventive detention order' in this order for the sake of brevity, convenience and clarity.

3. Mr.S.Lokesh, learned counsel on record for petitioner and Mr.E.Raj Thilak, learned State Additional Public Prosecutor for all respondents are before us.

4. As would be evident from paragraph 5 of the Admission Board order, at the time of admission learned counsel posited his challenge to the impugned preventive detention order on the point that detenu has not moved any bail application and hence the subjective satisfaction arrived at by the detaining authority regarding real possibility of detenu coming out on bail reflects non-application of mind but in the final hearing today, 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



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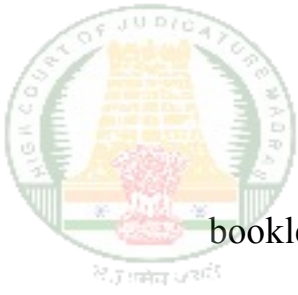
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No.43/2018, the bail was granted by the Court of Principal Sessions Judge at Chennai in Crl.M.P.No.1759/2018. Hence, I infer that there is a real possibility of his coming out on bail in P-5 MKB Nagar Police Station Cr. No.110/2023 and T-12 Poonamallee Police Station Crime No.116/2023 cases by filing bail application before the appropriate court, since in a similar case, the bail was granted by the court after a lapse of time...'

5. Thereafter, learned counsel placed before us the grounds booklet as served on the detenu and drew our attention to page Nos.187 to 190 thereat which contain **Aravind case** bail order (similar case) made in English by the learned Sessions Judge and what according to the Detaining Authority is Tamil translation version of the same i.e., **Aravind** case bail order. 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 calendar years in paragraph (6) but in the Tamil translation, the same is missing.

6. Learned Prosecutor in response to the above argument submitted that only mentioning of the calendar years of pending cases with specificity is missing, the same is clerical error but otherwise the translation is largely correct.

7. We carefully considered the rival submissions. We find from the confession statement of the detenu at page Nos. 98 and 99 of the grounds



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booklet that the literacy level of the detenu is XII 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 XII 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.

8.Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 18.03.2023 bearing reference No.69/BCDFGISSSV/2023 made by the second respondent is set aside and the detenu Thiru. Vishwa @ Scale, aged 22 years, Son of Thiru.Duraisamy, 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.)
04.09.2023

Index : Yes
Neutral Citation : Yes
Speaking order
gpa

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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High Court, Madras.



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