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H.C.P.No.637 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.637 of 2023

Rani

.. Petitioner

VS

1.State of Tamil Nadu rep. By its
Additional Chief Secretary to the Government
Home, Prohibition and Excise Department
Fort St.George
Chennai – 600 009.

2.The Commissioner of Police
Greater Chennai
O/o.the Commissioner of Police
Vepery, Chennai – 600 007

3. The Inspector of Police
Anti-Vice Squad II Police Station
Greater Chennai

4.The Superintendent of Police
Central Prison, Puzhal
Chennai – 600 066

.. 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



H.C.P.No.637 of 2023

relating to the detention order passed by the 2nd respondent pertaining to the order made in 68/BCDFGISSSV/2023 dated 18.03.2023 detaining the detenu under 2(g) of Tamil Nadu Act 14 of 1982 as a Immoral Traffic Offender and quash the same and direct the respondents to produce the detenu Duraiyappa, son of Ramaiah, aged about 43 years who is detained at Central Prison, Puzhal, Chennai before this Court and set him at liberty.

For Petitioner : Mr.S.Muragavel

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 28.04.2023, this Court made the following order:

H.C.P.No.637 of 2023

M.SUNDAR, J.,

and

M.NIRMAL KUMAR, J.,

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

Read this in conjunction with and in continuation of earlier proceedings made in the previous three listings on 20.04.2023, 24.04.2023 and 26.04.2023 which read as follows:



H.C.P.No.637 of 2023

Proceedings dated 20.04.2023:

'There is no representation for the petitioner.

2. With the intention of giving opportunity to the petitioner, learned counsel for the petitioner and detenu, list this matter on Monday. List on 24.04.2023.'

Proceedings dated 24.04.2023:

'Read this in conjunction with and continuation of earlier proceedings made in the previous listing on 20.04.2023, which reads as follows:

' There is no representation for the petitioner:

2. With the intention of giving opportunity to the petitioner, learned counsel for the petitioner and detenu, list this matter on Monday. List on 24.04.2023.'

2. The position is no different today i.e., there is no representation for the petitioner today also. However, with the intention of giving one more opportunity to the petitioner, list the matter day-after-tomorrow.

List on 26.04.2023.'

Proceedings dated 26.04.2023:

'Read this conjunction with and in continuation of earlier proceedings made in the previous listing on 24.04.2023.

2. The position is no different today. In other words, there is no representation for the petitioner today also.

3. However, with the intention of giving further opportunity to the petitioner, petitioner's counsel and detenu, list this matter again on 28.04.2023.'

2. It is rather unfortunate that there is no representation in three consecutive / successive listings. Today also, there is no representation for the petitioner.

3. However, as the captioned matter is a habeas corpus petition, considering the litigant / detenu, we examined the case file and we find that prima facie case has been made out



for admission.

4. Captioned Habeas Corpus Petition has been filed in this Court on 12.04.2023 inter alia assailing a detention order dated 18.03.2023 bearing reference No.68/BCDFGISSSV/2023 made by 'second respondent' [hereinafter 'Detaining Authority' for the sake of convenience and clarity]. To be noted, third respondent is the Sponsoring Authority.

5. Wife of detenu is the petitioner.

6. The ground case qua the detenu is for alleged offence under Sections 3(2)a, 4(1), 5(1)a, 6(1), 7(1) of ITP Act in Crime No.5 of 2023 on the file of Anti Vice Squad-II, Chennai.

7. The aforementioned detention order has been made on the premise that the detenu is a 'Immoral Traffic Offender' under Section 2(g) 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].

8. The detention order has been assailed inter alia on the ground that there is delay in considering the representation given by the petitioner on 31.03.2023.

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

10. Mr.R.Muniyapparaj, learned Additional Public



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H.C.P.No.637 of 2023

Prosecutor, State of Tamil Nadu accepts notice for all respondents. List the captioned Habeas Corpus Petition accordingly.'

2. The aforementioned Admission Board order dated 28.04.2023 captures all essentials i.e., essentials imperative for appreciating this order and therefore, we are not setting out the facts again in this final order. Suffice to say that aforementioned 28.04.2023 Admission Board order shall be read as integral part and parcel of this final order. Be that as it may, we are using the short forms, short references and abbreviations used in the Admission Board in this order also for the sake of convenience and clarity.

3. To be noted, 'detention order dated 18.03.2023 bearing reference No.68/BCDFGISSSV/2023 made by the Detaining Authority' shall hereinafter be referred to as 'impugned preventive detention order' for the sake of brevity, convenience and clarity.

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



H.C.P.No.637 of 2023

5.As would be evident from paragraph 8 of the admission order, at the time of admission, learned counsel projected his campaign against the impugned preventive detention order on the point that there is delay in considering the representation given by the petitioner on 31.03.2023, however in the final hearing, learned counsel for petitioner projected his argument qua challenge to the impugned preventive detention order on the point of not providing translated copy of a document (relied on by the detaining authority) in a language which the detenu is conversant with. Learned counsel adverting to page 109 of the grounds booklet submitted that copy of prayer for remand, which is a mixed English and Tamil document, has not been given to the detenu.

6. We had the benefit of perusing the booklet. We also noticed that prayer for remand in the ground case 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.

7. Be that as it may, we are informed that the literacy level of the detenu is III standard and he is a school drop out. We are also informed that the detenu is conversant only with Tamil. Relevant portion



H.C.P.No.637 of 2023

of the confession is in Page No.131 of the grounds booklet and the same reads as follows:

**'நான் ஊரில் இந்து துவக்கப் பள்ளியில் முன்றாம்
வகுப்பு வரை படித்துள்ளேன் '**

8. We 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 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



WEB COPY



H.C.P.No.637 of 2023

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

9. In the case on hand, we find that prayer for remand of the detenu which has been relied on as part of the grounds of detention qua impugned detention order is a crucial document and not furnishing translation of the same in Tamil, the lone language known to the detenu, has impaired his constitutional right to make an effective representation qua the impugned detention order. We therefore have no hesitation in saying that the impugned detention order deserves to be dislodged.

10. Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 18.03.2023 bearing reference No.68/BCDFGISSSV/2023 made by the second respondent is set aside and the detenu Thiru. Duraiyappa, aged 43 years, Son of Thiru. Ramaiah 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

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P.S: Registry to forthwith communicate this order to Jail authorities in Central Prison, Puzhal, Chennai.



H.C.P.No.637 of 2023

To

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Greater Chennai
O/o.the Commissioner of Police
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High Court, Madras.



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H.C.P.No.637 of 2023

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H.C.P.NO.637 OF 2023

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