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H.C.P.No.671 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.09.2023

CORAM

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

H.C.P.No.671 of 2023

Vijayalakshmi

.. Petitioner

Vs

1.The Additional Chief Secretary to
Government of Tamilnadu,
Home, Prohibition and Excise Department,
Secretariat, Chennai – 9.

2.The Commissioner of Police,
Greater Chennai Police,
Office of the Commissioner of Police,
Vepery, Chennai – 600 007.

3.The Superintendent,
Central Prison,Puzhal, Chennai – 600 066.

4.The Inspector of Police
J6 Thiruvanmiyur Police Station,
Thiruvanmiyur, Chennai – 90.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus to call for the entire records connected with the detention order passed by the second respondent in Memo No.63/BCDFGISSSV/2023 dated 14.03.2023 and quash the same as illegal and direct the respondents to produce the

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body or person of the detenu namely Mr.Murugavel, male, aged 23 years, son of Mr.Sakthivel, permanently residing at No.182, Baindiyamman Kovil Street, Besant Nagar, Chennai – 90, now confined at Central Prison, Puzhal, Chennai, before this Court and set him at liberty forthwith.

For Petitioner : Mr.G.Bhaskar
for Mr.N.Kannan

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 25.04.2023, the following order was made:

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M.SUNDAR, J.,
and
M.NIRMAL KUMAR, J.,

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

Captioned Habeas Corpus Petition has been filed in this Court on 17.04.2023 inter alia assailing a detention order dated 14.03.2023 bearing reference BCDFGISSSV No.63/2023 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, wife of the detenu is the petitioner.

3. Mr.N.Kannan, 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



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341, 294(b), 324, 307 and 506(ii) of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] in Crime No.81 of 2023 on the file of J-6, Thiruvannamiyur 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 representation sent by the detenu for supply of Tamil translation of the documents provided at Pages 121 to 137 was not considered till date, which prevented the detenu from making 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 all essentials that are imperative for appreciating this order and therefore, we are not setting out the same again. Suffice to say that aforementioned Admission Board order shall be read as an 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 order in this final order also for the sake of convenience and clarity. To be noted, 'detention order dated 14.03.2023 bearing



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reference BCDFGISSSV No.63/2023' made by the 'detaining authority' shall hereinafter be referred to as 'impugned preventive detention order' in this final order for the sake of brevity, convenience and clarity.

3. Mr.G.Bhaskar, learned counsel representing the counsel on record for petitioner and Mr.E.Raj Thilak, learned Additional Public Prosecutor for all the respondents are before us.

4. As would be evident from paragraph 5 of the Admission Board order, at the time of admission, learned counsel for petitioner predicated his challenge to the impugned preventive detention order on the point that representation sent by the detenu for supply of Tamil translation of the documents provided at pages 121 to 137 was not considered.

5. Elaborating on the above submission, learned counsel for petitioner drew our attention to page No.121 of the grounds booklet which contains the Arrest/Court Surrender Form and Tamil translation of the said document has not been furnished to the detenu.

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6. We had the benefit of perusing the booklet. We also noticed that Arrest/Court Surrender Form in the ground case forms part of the grounds 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 X Standard and he is a school drop out. We are also informed that the detenu is conversant only with Tamil. 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 paragraphs 6 and 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 Arrest/Court Surrender Form in the ground case 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 in Tamil the lone language known to the detainee has impaired his constitutional right to make an effective representation qua 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.



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10. Ergo, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 14.03.2023 bearing reference BCDFGISSSV No.63/2023 made by the second respondent is set aside and the detenu Thiru.Murugavel, aged 40 years, Son of Thiru.Sakthivel, 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.)
12.09.2023

Index : Yes
Neutral Citation : Yes
mmi

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

To

- 1.The Additional Chief Secretary to Government of Tamilnadu,
Home, Prohibition and Excise Department,
Secretariat, Chennai – 9.
- 2.The Commissioner of Police,
Greater Chennai Police,
Office of the Commissioner of Police,
Vepery, Chennai – 600 007.
- 3.The Superintendent,
Central Prison,Puzhal, Chennai – 600 066.
- 4.The Inspector of Police
J6 Thiruvanmiyur Police Station,
Thiruvanmiyur, Chennai – 90.
- 5.The Public Prosecutor, High Court, Madras.

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R.SAKTHIVEL, J.,**

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