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H.C.P.No.659 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.08.2023

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

H.C.P.No.659 of 2023

Meena

.. Petitioner

Vs

1. The Secretary to the Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai -9.
2. District Collector & District Magistrate,
Cuddalore District, Cuddalore.
- 3.The Superintendent of Police,
Cuddalore District, Cuddalore.
- 4.The Superintendent,
Central Prison, Cuddalore District,
Cuddalore.
- 5.The Inspector of Police,
Vridhachalam PEW Police Station,
Cuddalore District.

.. Respondents

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 connection with the order of detention passed by the second

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respondent dated 28.03.2023 in C3/D.O.No.05/2023 against the petitioner's husband Velmurugan, male, aged 46 years, S/o.Kaliyamoorthy, who is confined at Central Prison, Cuddalore and set aside the same and direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner : Mr.D.Balaji

For Respondents : Mr.E.Raj Thilak
Additional Public Prosecutor

ORDER

[Order of the Court was made by **R.SAKTHIVEL, 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, 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 28.03.2023 bearing reference C3/D.O/05/2023 made by 'second respondent' [hereinafter 'Detaining Authority' for the sake of convenience and clarity]. To be noted, fifth respondent is the Sponsoring Authority.

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

3. Mr.D.Balaji, learned counsel on record for habeas corpus petitioner is before us. Learned counsel for petitioner



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submits that ground case qua the detenu is for alleged offences under Sections 4(1)(aaa) and 4(1-A) read with 14A (Transport) of Tamil Nadu Prohibition Act, 1937 in Crime No.176 of 2023 on the file of Prohibition Enforcement Wing, Virudhachalam.

4. The aforementioned detention order has been made on the premise that the detenu is a 'Bootlegger' under Section 2(b) 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 remand order was not properly translated in Tamil and there is variation in the English version and Tamil version of grounds of detention, 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.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 orders captures all 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.



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

4. To be noted, 'order dated 28.03.2023 bearing reference C3/D.O./05/2023' 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 order, at the time of admission, learned counsel for petitioner predicated his challenge to the impugned preventive detention order on the point that remand order was not properly translated in Tamil and there is variation between the English version and Tamil version of grounds of detention which prevented the detenu from making an effective representation, however in the final hearing today, learned counsel for petitioner submitted that the remand order relied on by the detaining authority has not been furnished to the detenu.



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6. Elaborating on the above submission, learned counsel for petitioner drew our attention to a portion of paragraph 3 of the grounds of detention, which reads as follows:

'...Then the accused Thiru.Velmurugan, S/o.Kaliyamoorthy along with transport vehicle and the seized contrabands were brought to Prohibition Enforcement Wing, Vridhachalam on 18.03.2023 at 10.30 hrs., and a case in Cr.No.176/2023 u/s 4(1)(aaa) & 4(1-A) r/w 14A (Transport) of Tamil Nadu Prohibition Act, 1937 was registered against him. Then the accused were duly produced before the District Munsif cum Judicial Magistrate, Tittagudi on the same day and remanded to judicial custody till 31.03.2023. Now Thiru.Velmurugan, S/o.Kaliyamoorthy is presently lodged at Sub Jail, Vridhachalam. The case is under investigation.....'

7. Learned counsel for petitioner submitted that the remand



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order relied on by the detaining authority has not been furnished to the detenu which shows that the detaining authority has not applied his mind before passing the impugned preventive detention order.

8. Per contra, learned Prosecutor does not have legal argument in this regard.

9. Since the detaining authority has not furnished the remand order which is relied on by him, this Court is of the view that the detaining authority has not applied his mind before passing the impugned preventive detention order. In view of the same, the right of the detenu to make an effective representation which is a constitutional safeguard ingrained in Article 22(5) of the Constitution of India is impaired. Therefore, we are inclined to set aside the impugned preventive order.

10. In the result, captioned HCP is allowed. Impugned preventive detention order dated 28.03.2023 bearing reference C3/D.O./05/2023 made by the second respondent is set aside and the detenu Thiru.Velmurugan, aged 46 years, Son of Thiru.Kaliyamoorthy,



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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/No

Neutral Citation : Yes/No

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

To

1. The Secretary to the Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai -9.
2. The District Collector & District Magistrate,
Cuddalore District, Cuddalore.
3. The Superintendent of Police,
Cuddalore District, Cuddalore.
4. The Superintendent,
Central Prison, Cuddalore District,
Cuddalore.
5. The Inspector of Police,
Vridhachalam PEW Police Station,
Cuddalore District.
6. The Public Prosecutor,
High Court, Madras.



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and
R.SAKTHIVEL, J.,**

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