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H.C.P.No.652 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.08.2023

CORAM

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

H.C.P.No.652 of 2023

Sumathi
W/o.Murugan

.. Petitioner

Vs

State of Tamil Nadu Rep. by

1. The Secretary to Government
Home, Prohibition & Excise Department
Fort St.George
Chennai-600 009.
2. The Commissioner of Police
Avadi City
Avadi.
3. The Superintendent of Prison
Central Prison-II
Puzhal, Chennai.
4. The Inspector of Police
T-7, Pattabiram Police Station
Avadi Commissionate.

.. 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 pertaining to the order of detention passed by the 2nd respondent in No.62/BCDFGISSSV/2023 dated 07.03.2023 against the petitioner's son the detenu Mahesh Kumar @ Mahesh aged 24 years S/o.Murugan now confined in Central Prison, Puzhal, Chennai and set aside the same and direct the respondents to produce the detun before this Honble Court and set him at liberty

For Petitioner : Mr.T.Balaji
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 21.04.2023, the following order was made:

'HCP No.652 of 2023

M.SUNDAR, J.,
AND
SUNDER MOHAN, J.,

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

Captioned Habeas Corpus Petition has been filed in this



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Court on 17.04.2023 inter alia assailing a detention order dated 07.03.2023 bearing reference No.62/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. Mother of detenu is the petitioner.

3. Learned counsel for petitioner submits that ground case qua the detenu is for alleged offences under Sections 341, 294(b), 323, 336, 427, 397 and 506(ii) of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] in Crime No.52 of 2023 on the file of T-9 Pattabiram 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 family members were not informed about the detention of the detenu.

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



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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 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.

3. Mr.T.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 07.03.2023 bearing reference No.62/BCDFGISSSV/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.



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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 family members were not informed about the detention of the detenu but in the final hearing Board today, learned counsel predicated his campaign against the impugned preventive detention order on the ground that the subjective satisfaction arrived at by the Detaining Authority qua imminent possibility of detenu being released on bail is impaired.

6. Elaborating on the aforementioned point on subjective satisfaction, 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 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 it is very likely of his coming out on bail in T-9 Pattabiram Police Station Crime No.52/2023, since in similarly placed cases bails are granted by courts



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after a lapse of time...'

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7. Thereafter, learned counsel placed before us the grounds booklet as served on the detenu and drew our attention to page Nos.155 to 158 thereat wherein *Aravind's case* bail order (similar case) made in English by the learned Sessions Judge and what according to the Detaining Authority's Tamil translation version were furnished to the detenu. On 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 years in paragraph 6 but in the Tamil translation the same is missing.

8. Learned Prosecutor in response to the above arguments submitted that only the mentioning of the years of pending cases with specificity is missing but otherwise the translation is largely correct.

9. We carefully considered the rival submissions. We find from the confession statement of the detenu at page Nos.132 to 134 of the grounds



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booklet that the literacy level of the detenu is only 10th 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 10th 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.

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

11. Therefore, this is a case of improper translation as well as providing documents with different contents in two different languages impairing the detenu's right to make an effective representation. The net sequitur is the impugned preventive detention order is vitiated and the same deserves to be dislodged.

12. Before concluding, we also remind ourselves that preventive detention is not a punishment and HCP is a high prerogative writ.

13. Ergo, the sequitur is, captioned HCP is allowed. Impugned



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preventive detention order dated 07.03.2023 bearing reference

No.62/BCDFGISSSV/2023 made by the second respondent is set aside and

the detenu Thiru.Maheshkumar @ Mahesh, male, aged 24 years, son of

Thiru.Murugan, 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.)

17.08.2023

Index : Yes

Internet : Yes

Neutral Citation : Yes

mk

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

To

1. The Secretary to Government
Home, Prohibition & Excise Department
Fort St.George
Chennai-600 009.
2. The Commissioner of Police
Avadi City
Avadi.
3. The Superintendent of Prison
Central Prison-II
Puzhal, Chennai.
4. The Inspector of Police
T-7, Pattabiram Police Station

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5.

Avadi Commissionate.
The Public Prosecutor,
High Court, Madras.



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**M.SUNDAR, J.,
and
R.SAKTHIVEL, J.,**

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