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H.C.P.No.808 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.09.2023

Coram

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

H.C.P.No.808 of 2023

M.Sridevi

W/o.Manikandan

.. Petitioner /wife of detenu

VS

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

2.The Commissioner of Police,
Tambaram City, Semmancheri,
Chennai – 600 119.

3. The Inspector of Police,
T-17 Perumbakkam Police Station,
Perumbakkam,
Chennai – 600 131.

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

.. 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 relating to the order made in BCDFGISSSV No.09/2023 dated 03.03.2023 detaining the detenu under 2(f) of Tamil Nadu Act of 1982, as a Goonda and quash the same and direct the respondents to produce the detenu K.Manikandan @ Surai Mani, S/o.Kumar aged about 21 years, who is detained at the Central Prison, Puzhal, Chennai before this Court and set him at liberty.

For Petitioner : Mr.S.Kamalakanth
for Mr.P.Sundararajan

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

ORDER

[Order of the Court was made by **M.SUNDAR, J.**]

Captioned 'Habeas Corpus Petition' ['HCP' for the sake of brevity] has been filed by wife of the detenu assailing a 'preventive detention order dated 03.03.2023 bearing reference BCDFGISSSV No.09/2023' [hereinafter 'impugned preventive detention order' for the sake of convenience and brevity] made by second respondent (hereinafter 'detaining authority' for the sake of convenience). To be noted, third respondent is the sponsoring authority.



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2. Impugned preventive detention order has been made under '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] on the premise that the detenu is a 'Goonda' within the meaning of Section 2(f) of Act 14 of 1982.

3. There are three adverse cases and one ground case. The ground case which constitutes substantial part of substratum of the impugned preventive detention order is Crime No.13 of 2023 on the file of T-17 Perumbakkam Police Station for alleged offences under Sections 341, 294(b), 323, 392, 397 and 506(ii) of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity]. Owing to the nature of the challenge to the impugned preventive detention order, it is not necessary to delve into the factual matrix or be detained further by facts.

4. Mr.S.Kamalakanth, learned counsel representing the counsel on record for petitioner and Mr.E.Raj Thilak, learned State Additional Public



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Prosecutor for all respondents are before us.

5. When the matter was listed for admission before another Hon'ble Co-ordinate Division Bench of this Court on 04.05.2023, the following order has been made:

Sl.No.	Date	Main Case/ Misc. Case No.	Office Notes, Reports, Orders or Proceedings with Signatures
1	04/05/ 2023	H.C.P. No. 808/2023	ADJCT & CENS Mr. P. Muniyappan, learned counsel, public prosecutor takes notice for the respondents. Post the matter after four weeks. B/o ata/pus 04/05/2023.

Therefore, we deem it appropriate to say Admit. Issue Rule Nisi. However, as learned Additional Public Prosecutor has already accepted notice, both sides agreed to have the main HCP taken up and heard out.

6. Though very many grounds have been raised in the support affidavit, Mr.S.Kamalakanth, learned counsel on record for petitioner at the



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hearing projected his argument qua challenge to the impugned preventive detention order on one point and that one point turns on incorrect/improper translation. Elaborating on the submission, learned counsel drew our attention to page No.5 (Grounds of detention order in English) and page No.16 (Grounds of detention order in Tamil). No proper translation of this document has been furnished to the detenu.

7. We had the benefit of perusing the grounds of detention order. In English version of the grounds of detention, the date of occurrence in third adverse case was mentioned as 09.01.2023 but in the Tamil translation, the date was mentioned as 09.01.2013. 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.

8. Be that as it may, we are informed that the literacy level of the detenu is 8th standard in school and he is a school drop out. We are also informed that the detenu is conversant only with Tamil.

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

10. Besides improper translation (to be noted, the literacy level of detenu is 8th standard in school and he is a school drop out), the complete difference in dates would also baffle anybody, i.e., complete difference in the English Grounds of Detention order and the Tamil Grounds of Detention order, resulting his impairment of constitutional right to make effective



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representation against the impugned preventive detention order. We therefore have no hesitation in saying that the impugned preventive detention order deserves to be dislodged.

11. Ergo, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 03.03.2023 bearing reference BCDFGISSSV No.09/2023 made by the second respondent is set aside and the detenu Thiru.K.Manikandan @ Surai Mani, aged 21 years, son of Thiru.Kumar 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.)
11.09.2023

Index : Yes
Speaking order
Neutral Citation : Yes
rsi

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



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

rsi

To

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Chennai – 600 009.
- 2.The Commissioner of Police,
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High Court, Madras.

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