



H.C.P.No.805 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.07.2023

CORAM

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

H.C.P.NO.805 OF 2023

Jamuna

..

Petitioner /
Mother of the detenu

VS

1.The Secretary to Government
Home, Prohibition and Excise Department
Secretariat
Fort St. George,
Chennai – 600 009.

2.The Commissioner of Police
Avadi City
Office of the Commissioner of Police
(Goondas Section)
Avadi, Chennai -600 054

3.The Superintendent of Prison
Central Prison - Puzhal
Chennai.

4. State rep. by its
The Inspector of Police
B-7, Vellavedu Police Station
Chennai District

.. Respondents



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PRAYER: 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 relating to the petitioner's son detention under Tamil Nadu Act 14 of 1982 vide detention order dated 31.12.2022 on the file of the second respondent made in proceedings Memo No.208/BCDFGISSSV/2022, quash the same as illegal and consequently direct the respondents herein to produce the petitioner's son namely Thirupathy, son of Mani, aged 24 years before this Court and set him at liberty from detention, now the petitioner's son is detained at Central Prison, Puzhal, Chennai.

For Petitioner : Mr.S.Senthilvel
for Mr.W.Camyles Gandhi

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 the mother of the detenu assailing a 'preventive detention order dated 31.12.2022 bearing reference 208/BCDFGISSSV/2022' [hereinafter 'impugned preventive detention order' for the sake of convenience and brevity]. To be noted, fourth respondent is the sponsoring authority and second respondent is the detaining authority as impugned preventive detention order has been made by second respondent.



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2. Impugned 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 four adverse cases and one ground case. The ground case which constitutes substantial part of substratum of the impugned preventive detention order is Crime No.558 of 2022 on the file of B-7 Vellavedu Police Station for alleged offences under Sections 341, 294(b), 427, 336, 397 and 506(ii) of 'Indian Penal Code, 1860 (Act 45 of 1860)' ['IPC' for brevity]. Owing to the nature of the challenge to the impugned detention order, it is not necessary to delve into the factual matrix or be detained further by facts.

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



5. Learned counsel for petitioner 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 there is a real possibility of his coming out on bail in B-7 Vellavedu Police Station Crime No.558/2022 case by filing another bail application before the appropriate court, since in a similar case, the bail was granted by the court after a lapse of time...'

7.Thereafter, learned counsel placed before us the grounds booklet as served on the detenu and drew our attention to page Nos.134 and 137 thereat which were **Aravind case** bail order (similar case) made in



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English by the learned Sessions Judge and what according to the Detaining Authority's Tamil translation version 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. 98 and 99 of the grounds booklet that the literacy level of the detenu is only 7th 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 7th 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.



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10.We also 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. '

11.Therefore, this is a case of improper translation as well as providing documents with different contents in two different languages



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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.Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 31.12.2022 bearing reference No.208/BCDFGISSSV/2022 made by the second respondent is set aside and the detenu Thiru. Thirupathy, aged 24 years, Son of Thiru. Mani, 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.)
31.07.2023

Index : Yes
Neutral Citation : Yes
Speaking
gpa

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



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To

WEB COPY

- 1.The Secretary to Government
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- 5.The Public Prosecutor
High Court, Madras.



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