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HCP No.793 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.08.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

H.C.P.No.793 of 2023

Maheswari
W/o.Mohanraj

.. Petitioner

Vs.

1. The Government of Tamil Nadu
Rep. by its Addl. Chief Secretary to Government
Home, Prohibition and Excise Department
Secretariat, Chennai-600 009.
2. The Commissioner of Police
Greater Chennai Police
Vepery, Chennai-8.
3. The Superintendent
Central Prison, Puzhal
Chennai-600 066.
4. Inspector of Police
L & O, J-7, Velachery Police Station
Chennai.

..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 relating to the proceedings of the 2nd respondent in B.C.D.F.G.I.S.S.S.V.No.35/2023 dated



HCP No.793 of 2023

07.02.2023 against the petitioner's son Sathish, male, aged about 21 years, son of Mohanraj and quash the same and consequently, direct the respondents herein to produce the detenu, who is detained under the Tamil Nadu Act 14 of 1982 currently confined at Central Prison, Puzhal before this Hon'ble Court and set him at liberty.

For Petitioner : Mr.S.Senthilvel
representing Mr.G.Pandiyan
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 mother of the detenu assailing a 'preventive detention order dated 07.02.2023 bearing reference No.BCDFGISSSV No.35/2023' [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 the impugned preventive detention order has been made by second respondent.

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



HCP No.793 of 2023

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. Coordinate Hon'ble Bench issued notice on 04.05.2023. Learned Prosecutor is ready with instructions.

4. Admit.

5. Mr.E.Raj Thilak, learned State Additional Public Prosecutor accepts notice for all respondents. Mr.S.Senthilvel, learned counsel representing the counsel on record for petitioner is before this Court. With the consent of both sides, captioned HCP is taken up.

6. 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.11 of 2023 on the file of J-7 Velachery Police Station for alleged offences under Sections 294(b), 341, 307 of 'The Indian



HCP No.793 of 2023

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.

7. Though very many grounds have been raised in the support affidavit, Mr.S.Senthilvel, learned counsel representing the counsel on record for petitioner at the hearing projected his argument qua challenge to the impugned preventive detention order on one point and that point is providing improper translated copy of a document (relied on by the detaining authority) in a language which the detenu is conversant with. Elaborating on the submission, learned counsel drew our attention to page No.365 of the booklet which is Remand Order dated 11.01.2023. Improper Tamil translation of the above document has been furnished to the detenu. We had the benefit of perusing the booklet. Remand order in English talks about A1 and A2 being produced before jurisdictional Magistrate whereas Tamil translation says that they have been produced along with properties. Likewise in the remand order in English in the last sentence, there is no mention about A1 and A2 whereas in Tamil translation there is mention about A1 and A2. We also



HCP No.793 of 2023

noticed that Remand Order dated 11.01.2023 forms part of the ground 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.

8. Be that as it may, we are informed that the literacy level of the detenu is 12th standard in school. 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 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.



HCP No.793 of 2023

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. '

9. We find that the aforementioned **Powanammal** case applies in all fours to the case on hand as we find that Remand Order dated 11.01.2023 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 detenu has impaired his constitutional right to make an effective representation of the impugned preventive detention order. We therefore have no hesitation in saying that the impugned preventive detention order deserves to be dislodged.

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

11. Apropos, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 07.02.2023 bearing reference



HCP No.793 of 2023

No.BCDFGISSSV No.35/2023 made by the second respondent is set aside and the detenu Thiru.Sathish, male, aged 21 years, Son of Thiru.Mohanraj, 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.)
07.08.2023

Index : Yes

Speaking

Neutral Citation : Yes

mk

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

To

1. The Government of Tamil Nadu
Rep. by its Addl. Chief Secretary to Government
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5. The Public Prosecutor
High Court, Madras.

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



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