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H.C.P.No.825 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.08.2023

CORAM

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

H.C.P.No.825 of 2023

Kavya

.. Petitioner

Vs

- 1.The State rep. By
The Secretary to Government,
Home, Prohibition and Excise Department,
Government of Tamil Nadu,
Fort St. George, Chennai – 9.
2. The District Collector and District Magistrate,
Office of District Collector,
Thiruvannamalai District, Thiruvannamalai.
- 3.The Superintendent of Police,
Office of the Superintendent of Police,
Thiruvannamalai District, Thiruvannamalai.
- 4.The Superintendent,
Central Prison – Vellore, Vellore.
- 5.The Inspector of Police,
All Women Police Station,
Thiruvannamalai Rural,
Thiruvannamalai District.

.. 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 of the second respondent in connection with order made in D.O.No.112/2022-C2 dated 12.12.2022 passed against petitioner's father Baskaran @ Baskar, aged 49 years, S/o.Kannaiyan, who is confined at Central Prison, Vellore and quash the same and direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner : Mr.S.Thirugnanam
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 daughter of the detenu assailing a 'preventive detention order dated 12.12.2022 bearing reference D.O.No.112/2022-C2' [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, fifth 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 'Sexual Offender' within the meaning of Section 2(ggg) of Act 14 of 1982.

3. There is no adverse case. The ground case which is the sole substratum of the impugned preventive detention order is Crime No.07 of 2022 on the file of All Women Police Station, Thiruvannamalai Rural, for alleged offences under Sections 363, 366, 376(3), 506(ii) of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] and Sections 5(n), 5(l) r/w 6(1) of 'Protection of Children from Sexual Offences Act, 2012' (hereinafter 'POCSO Act' for the sake of convenience and clarity). 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.



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4. Mr.S.Thirugnanam, 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 projected his argument in his challenge against the impugned preventive detention order on the point that translated copies of the documents relied on by the detaining authority in a language which the detenu is conversant with, have not been furnished to the detenu.

6. Elaborating on the above submission, learned counsel drew our attention to page Nos.56, 57 and 71 of the grounds booklet which are Remand Order, Remand Extension Orders dated 24.11.2022 and 08.12.2022 and Certificate of Examination for Sexual Offences dated 16.11.2022. No Tamil translation of these documents have been furnished to the detenu.

7. We carefully considered the rival submissions. We find from the confession statement of the detenu at page No.44 of the grounds



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booklet that the literacy level of detenu is 12th Standard in school and the relevant portion reads as under:

'...என் பெயர் பாஸ்கரன். என்னை எல்லோரும்
பாஸ்கர் என்று கூப்பிடுவார்கள். எனக்கு வயது 49
ஆகிறது. நான் +2 வரை படித்துள்ளேன்....'

8. We had the benefit of perusing the grounds booklet. We also noticed that the aforementioned documents form part of the grounds on which the impugned preventive detention order has been made or in other words those documents have been relied on by the Detaining Authority in making the impugned preventive detention order. As this turns on obtaining scenario which comes to light from the grounds booklet which is before us, learned State Additional Public Prosecutor does not have much of a say.

9. Be that as it may, 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 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 Hon'ble Supreme Court answered this question have been



captured in paragraphs 6 and 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. In the case on hand, we find that the aforementioned documents which have been relied on as part of the grounds of detention qua impugned preventive detention order are crucial documents and not furnishing translation of the same in Tamil, the lone language known to the detenu, has impaired his constitutional right ingrained in Article 22(5) to make an effective representation qua 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 12.12.2022 bearing reference



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D.O.No.112/2022-C2 made by the second respondent is set aside and the detenu Thiru.Baskaran @ Baskar, aged 49 years, Son of Thiru.Kannaiyan, 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
Neutral Citation : Yes
mmi

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

To

- 1.The Secretary to Government,
Home, Prohibition and Excise Department,
Government of Tamil Nadu,
Fort St. George, Chennai – 9.
2. The District Collector and District Magistrate,
Office of District Collector, Thiruvannamalai District,
Thiruvannamalai.
- 3.The Superintendent of Police,
Office of the Superintendent of Police,
Thiruvannamalai District, Thiruvannamalai.
- 4.The Superintendent,
Central Prison – Vellore, Vellore.

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

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5.The Inspector of Police,
All Women Police Station,
Thiruvannamalai Rural,
Thiruvannamalai District.

6.The Public Prosecutor,
High Court, Madras.

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