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H.C.P.No.822 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.09.2023

CORAM

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

H.C.P.NO.822 OF 2023

Sunil Kavaskar

.. Petitioner

VS

1.The Additional Chief Secretary to Government
Home Prohibition and Excise Department
Secretariat,
Chennai – 600 009.

2.The Commissioner of Police
Avadi City.

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

4.The Inspector of Police (Crime)
E-5, Sholavaram Police Station
Avadi City.

.. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India
praying for issuance of a Writ of Habeas Corpus to call for the records in
connection with the order of detention passed by the second respondent



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dated 04.04.2023 in Memo No.92/ BCDFGISSSV/2023 against the petitioner brother Baskar, Male aged 23 years, S/o. Rajendiran, who is confined at Central Prison, Puzhal, Chennai and set aside the same and direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner : Mr.S.Senthilvel

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 brother of the detenu assailing a 'preventive detention order dated 04.04.2023 bearing reference Memo No.92/BCDFGISSSV/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 impugned preventive detention order has been made by second respondent.



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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 two adverse cases. The ground case which is the sole substratum of the impugned preventive detention order is Crime No.197 of 2023 on the file of E-5 Sholavaram Police Station for alleged offences registered under Sections 341, 294(b), 336, 427, 392, 397 and 506(ii) of 'The Indian Penal Code, 1860 (Act 45 of 1860)' ['IPC' for brevity]. 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.Senthilvel, learned counsel on record for petitioner and Mr.E.Raj Thilak, learned State Additional Public Prosecutor for all respondents are before us.



5.In the final hearing today, 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 CrI.M.P.No.1759/2018. Hence, I infer that there is a real possibility of his coming out on bail in E-5 Sholavaram Police Station Crime Nos.1008/2022, 62/2023 and 197/2023 cases by filing bail applications before the appropriate court, since in a similar case, the bail was granted by the court after a lapse of time...'

6.Thereafter, learned counsel placed before us the grounds booklet as served on the detenu and drew our attention to page Nos.96 to 99 thereat which contain **Aravind case** bail order (similar case) made in English by the learned Sessions Judge and what according to the Detaining Authority is Tamil translation version of the same i.e., **Aravind** case bail order. A perusal of the bail order in English and the Tamil translated version brings to light that the bail order in English refers to



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pending cases against the petitioner with specificity as regards calendar years in paragraph (6) but in the Tamil translation, the same is missing.

7.Learned Prosecutor in response to the above argument submitted that only mentioning of the calendar years of pending cases with specificity is missing, the same is clerical error but otherwise the translation is largely correct.

8.We carefully considered the rival submissions. We find from the confession statement of the detenu at page Nos.89 to 91 of the grounds booklet that the literacy level of the detenu is X Standard in School. Therefore, it is not merely a case of improper translation but it is also a case of giving orders with different contents in English and Tamil versions which can baffle a person whose literacy level is only X 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.

9.Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 04.04.2023 bearing reference



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No.92/BCDFGISSSV/2023 made by the second respondent is set aside

and the detenu Thiru. Baskar, male aged 23 years, Son of Thiru.

Rajendiran 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.)

08.09.2023

Index : Yes

Neutral Citation : Yes

Speaking order

TK

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



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To

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AND
R.SAKTHIVEL, J.

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