



H.C.P.No.836 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.836 OF 2023

Manjula

.. Petitioner

VS

- 1.State of Tamil Nadu
Rep. by the Additional Chief Secretary
to Government
Home, Prohibition and Excise Department
Fort St. George, Chennai – 600 009.
- 2.District Collector and District Magistrate
of Nagapattinam District
Office of the District Collector and
District Magistrate
Nagapattinam District, Nagapattinam.
- 3.The Superintendent of Police
Nagapattinam,
Nagapattinam District.
- 4.The Superintendent of Prison
Central Prison
Thiruchirappalli,
Thiruchirappalli District.



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5. The Inspector of Police
Kilvelur Police Station
Nagapattinam District.

.. 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 relating to the detention order in C.O.C.No.07/2023 dated 01.03.2023 passed by the second respondent under the Tamilnadu Act 14 of 1982 and set aside the same and direct the respondent to produce the petitioner's son Krishnaraj S/o. Rajamurugan aged about 22 years the detenu now confined in Central Prison, Thiruchirappalli before this Court and set him at liberty.

For Petitioner : Mr.M.Dhilipon
for Mr.J.Jawahar

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 01.03.2023 bearing reference C.O.C.No.07/2023' [hereinafter 'impugned preventive detention order' for the sake of convenience and brevity]. To be noted, fifth 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 is no adverse case. This solitary case which is the sole substratum of the impugned detention order is Crime No.604 of 2022 on the file of Kilvelur Police Station for alleged offences initially registered under Sections 294(b), 302 and 506(ii) of 'The Indian Penal Code, 1860 (Act 45 of 1860)' ['IPC' for brevity] and subsequently altered into under Sections 294(b), 302, 506(ii) of IPC and Section 3(1)(r), 3(1)(s) and 3(2)(v) of 'The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015' ['SC & ST Act' 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.



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4.Mr.M.Dhilipon, learned counsel representing

Mr.J.Jawahar, 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, Mr.M.Dhilipon, learned counsel for petitioner drew our attention to a portion of paragraph 4 of the impugned preventive detention order which reads as follows:

'4...However, in similar case (i.e) (1) Crime Number 371/2021 under section 294(b), 452, 302 of IPC, of Kilvelur Police Station, bail was granted by the Principal District and Sessions Judge, Nagapattinam in Cr.O.P.No.2905/2021, dated 24.09.2021 to an accused by name Thiru. Vallatharasu, Male Aged 51/2021, S/o.Kathamuthu and (2) In Crime Number 1707/2020 under section 294(b), 342, 452, 324, 506(ii), 307 of IPC of Kilvelur Police Station, bail was granted by the Court of Principal District and Sessions Judge, Nagapattinam in Cr.M.P.No.1038/2021, dated 05.04.2021 to an accused by name Thiru. Kannan, Male, Aged 38/2021, S/o. Ramasamy.

Hence I infer that there is a real possibility of Thiru. Krishnaraj, Male, Aged 22/2022, S/o.



Rajamurugan coming out on bail by filing a bail application in the above case before the appropriate court and higher court...'

6.Adverting to the aforesaid portion of the grounds of impugned preventive detention order, learned counsel submitted that the Detaining Authority has relied on an 'order dated 24.09.2021 made in Cr.O.P.No.2905/2021 on the file of learned Principal District and Sessions Judge, Nagapattinam' [hereinafter '**Vallatharasu case**' for the sake of convenience as Vallatharasu is the petitioner in the said case] for arriving at subjective satisfaction as regards imminent possibility of the detenu being enlarged on bail.

7.Adverting to **Vallatharasu case** furnished to the detenu as part of the grounds booklet it was submitted that the order dated 24.09.2021 in Cr.O.P.No.2905/2021 on the file of learned Principal District and Sessions Judge, Nagapattinam is an order made in a petition under Section 441 of Cr.P.C., with a prayer to relax the bail condition. We perused the grounds booklet and found that the submission is factually correct.



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8.Learned counsel submitted that subjective satisfaction arrived at by the Detaining Authority qua imminent possibility of the detenu being enlarged on bail in the case on hand is clearly flawed.

9.In response to the aforementioned argument, learned Prosecutor submitted that it is an inadvertent secretarial / clerical error.

10.We carefully considered the rival submission made on both sides. We find two aspects of the matter. One is a bail condition relaxation order has been referred to for arriving at subjective satisfaction qua imminent possibility of the detenu being enlarged on bail. This is clearly non-application of mind on the part of the Detaining Authority. The second aspect of the matter is even as regards this bail relaxation order in ***Vallatharasu case***, Tamil translation has not been furnished to the detenu. We find that the literacy level of the detenu is X Standard and he is a school drop out. In the light of Powanammal case i.e., ***Powanammal Vs. State of Tamil Nadu***, we have no hesitation in saying that aforementioned incorrect translation has impaired the impugned preventive detention order.



11.To be noted, in Powanammal case reported in **(1999) 2**

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SCC 413, Honourable Supreme Court addressed itself to a question and answered the same. The question and answer to the same are captured in paragraphs 6 and 16 respectively, which 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. '

Therefore, on both facets or both aspects of the aforementioned points, the petitioner's counsel campaign against the impugned preventive detention order is sustained.

12.Ergo, the sequitur is, captioned HCP is allowed.



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Impugned detention order dated 01.03.2023 bearing reference C.O.C.No.07/2023 made by the second respondent is set aside and the detenu Thiru. Krishnaraj, male, aged 22 years, Son of Thiru. Rajamurugan 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, Tiruchirappalli.



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To

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1. The Additional Chief Secretary to Government
Home, Prohibition and Excise Department
Secretariat,
Chennai – 600 009.
2. District Collector and District Magistrate
of Nagapattinam District
Office of the District Collector and
District Magistrate
Nagapattinam District, Nagapattinam.
3. The Superintendent of Police
Nagapattinam,
Nagapattinam District.
4. The Superintendent of Prison
Central Prison
Thiruchirappalli,
Thiruchirappalli District.
5. The Inspector of Police
Kilvelur Police Station
Nagapattinam District.
6. The Public Prosecutor
High Court, Madras.



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M.SUNDAR, J.
AND
R.SAKTHIVEL, J.

TK

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