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H.C.P.No.844 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.08.2023

Coram

THE HON'BLE MR.JUSTICE **M.SUNDAR**
and
THE HON'BLE MR. JUSTICE **R.SAKTHIVEL**

H.C.P.No.844 of 2023

Shakila

.. Petitioner/
Wife of the detenu

VS

- 1.The Secretary to Government
Government of Tamil Nadu (Home)
Prohibition and Excise Department
Fort St.George
Chennai – 600 009
2. The District Collector and District Magistrate
Vellore District, Vellore - 9
3. The Superintendent of Police
Vellore District, Vellore
4. The Superintendent
Central Prison, Vellore, Vellore District
5. The Inspector of Police
Pernambut Police Station
Pernambut, Vellore District

.. 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



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impugned order C3/D.O.No.29/2023 dated 17.04.2023 on the file of the 2nd respondent herein and set aside the same as illegal and direct the respondents to produce the detenu namely Sokkaiyan @ Damodharan, son of Venkatesan, aged about 31 years, now confined in Central Prison, Vellore before this Court and set him at liberty.

For Petitioner : Mr.G.Vinodh Kumar
For Respondents : Mr.E.Raj Thilak
Additional Public Prosecutor

ORDER

[Order of the Court was made by M.SUNDAR, J.]

This 'Habeas Corpus Petition' ['HCP' for the sake of brevity] has been filed by wife of the detenu assailing a 'preventive detention order dated 17.04.2023 bearing reference C3/D.O.No.29/2023' [hereinafter 'impugned preventive detention order' for the sake of brevity and convenience]. 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.

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



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(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 'Bootlegger' within the meaning of Section 2(b) of Act 14 of 1982.

3. There are six adverse cases and one ground case. The ground case which constitutes substantial part of the impugned preventive detention order is Crime No.125 of 2023 on the file of Pernambut Police Station for alleged offences under Sections 4(1)(i), 4(1)(aaa) and 4(1-A) of Tamil Nadu Prohibition Act, 1937' [hereinafter 'TNP Act' for the sake of convenience and clarity] altered into 4(1)(i), 4(1)(aaa), and 4(1-A) of TNP Act read with Section 328 of 'Indian Penal Code, 1860 (Act 45 of 1860)' ['IPC' for brevity]. Considering the nature of the challenge to the impugned detention order, it is not necessary to delve into the facts of the case.

4. Mr.G.Vinoth Kumar, learned Senior counsel appearing on behalf of counsel on record for petitioner and Mr.E.Raj Thilak, learned State Additional Public Prosecutor for all respondents are before us.

5. Though very many grounds have been raised in the support affidavit, Mr.G.Vinoth Kumar, learned counsel on record for petitioner at the hearing projected his argument qua challenge to the impugned preventive detention order on one point and that one point turns on not providing of



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translated copy of a document (relied on by the detaining authority) in a language which the detenu is conversant with. Elaborating on the above submission, learned counsel drew our attention to page Nos.75 and 76 of the booklet which is bail petition pertaining to the detenu in the ground case. No Tamil translation of this document has been furnished to the detenu.

6. We had the benefit of perusing the booklet. We also noticed that order of the bail petition in the ground case forms part of the ground on which the impugned 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.

7. Be that as it may, we are informed that the literacy level of the detenu is very low. 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.

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. '

8. We find that the aforementioned **Powanammal** case applies in all fours to the case on hand as we find that bail petition in the ground case 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 qua impugned preventive detention order. We therefore have no hesitation in saying that the impugned preventive detention order deserves to be dislodged.



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

10. Apropos, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 17.04.2023 bearing reference C3/D.O.No.29/2023 made by the second respondent is set aside and the detenu Thiru.Sokkaiyan @ Damodharan, male, aged 31 years, Son of Thiru.Venkatesan, 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.)
31.08.2023

Index : Yes

Neutral Citation : Yes

GPA

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



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To

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

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