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H.C.P.No.850 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.850 of 2023

Senthamizhselvi

.. Petitioner

VS

1.The State of Tamilnadu

Represented by Secretary to Government
Home, Prohibition & Excise Department
Fort St. George, Chennai – 600 009.

2.The District Collector and District Magistrate

Mailaduthurai District,
Mailaduthurai.

3.The Superintendent of Police

Mailaduthurai District,
Mailaduthurai.

4.The Inspector of Police

PEW Sirkazhi Police Station
Mailaduthurai District.

5.The Superintendent of Prison

Central Prison
Tiruchirappalli.

.. Respondents



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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 dated 26.04.2023 passed by the second respondent in his proceedings No.C.O.C.No.20/223 and quash the same and direct the respondents herein to produce the petitioner's husband namely Durai @ Tamilselvan son of Nagappan aged about 56 years, who is presently undergoing detention in the Central Prison, Tiruchirappalli, as Bootlegger before this Court and set him at liberty forthwith.

For Petitioner : Mr.P.Narayana Prasadh
for Mr.M.Vinoth

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 wife of the detenu assailing a 'preventive detention order dated 26.04.2023 bearing reference C.O.C.No.20/2023' [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 'Bootlegger' within the meaning of Section 2(b) of Act 14 of 1982.

3. There is one adverse case. The ground case which constitutes substantial part of substratum of the impugned preventive detention order is Crime No.326/2023 on the file of Sirkazhi Prohibition Enforcement Wing for alleged offences registered under Section 4(1)(aaa) read with 4(1-A) of 'the Tamil Nadu Prohibition Act, 1937' [hereinafter 'TNP Act' 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.



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4.Mr.P.Narayana Prasadh, learned counsel representing

Mr.M.Vinoth, 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, learned counsel for petitioner projected his argument qua challenge to the impugned preventive detention order on the point of not providing translated copy of a document (relied on by the detaining authority) in a language which the detenu is conversant with. Learned counsel adverting to page nos.58 and 59 of the grounds booklet submitted that copy of Forensic Examination Report, which is a mixed English and Tamil document, has not been given to the detenu.

6.We had the benefit of perusing the booklet. We also noticed that Forensic Examination Report in the ground case 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.



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7.Be that as it may, we are informed that the literacy level of the detenu is IX standard and he is a school drop out. We are also informed that the detenu is conversant only with Tamil. Relevant portion of the confession is in Page No.23 of the grounds booklet and the same reads as follows:

'நான் 9-ம் வகுப்பு வரை படித்துள்ளேன் '

8.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



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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. '

9.In the case on hand, we find that the Forensic Examination Report which has been relied on as part of the grounds of detention qua impugned detention order is a crucial document and not furnishing translation of the same in Tamil, the lone language known to the detenu, has impaired his constitutional right to make an effective representation qua the impugned detention order. We therefore have no hesitation in saying that the impugned detention order deserves to be dislodged.

10.Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 26.04.2023 bearing reference C.O.C.No.20/2023 made by the second respondent is set aside and the



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detenu Thiru. Durai @ Tamilselvan, aged 56 years, Son of Thiru.

Nagappan 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

TK

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

To

- 1.The Secretary to Government
Home, Prohibition & Excise Department
Fort St. George, Chennai – 600 009.
- 2.The District Collector and District Magistrate
Mailaduthurai District, Mailaduthurai.
- 3.The Superintendent of Police
Mailaduthurai District, Mailaduthurai.
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- 6.The Public Prosecutor
High Court, Madras.



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