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H.C.P.No.866 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.866 OF 2023

Lakshmi

.. Petitioner

VS

1.The State of Tamilnadu
Represented by Secretary to Government
Prohibition & Excise Department
Fort St. George,
Chennai – 600 009.

2.The Commissioner of Police
Avadi City,
Office of the Commissioner of Police
(Goondas Section)
Avadi, Chennai – 600 054.

3.The Superintendent of Prison
Central Prison
Puzhal, Chennai.

4.The Inspector of Police
M-5 Ennore Police Station
Chennai – 600 057.

.. Respondents



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PRAAYER: 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 B.C.D.F.G.I.S.S.S.V.NO.109 of 2023 and quash the same and direct the respondents herein to produce the petitioner's son Harish @ Karuppa S/o. Nelson, aged 25 years, who is presently undergoing detention in the Central Prison, Puzhal, Chennai before this Court and set him at liberty forthwith.

For Petitioner : Ms.M.Udayavani
for Mr.P.Chandra Sekar

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 26.04.2023 bearing reference Memo No.109/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 three adverse cases. The ground case which constitutes substantial part of substratum of the impugned preventive detention order is Crime No.169 of 2023 on the file of M-5 Ennore 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. Ms.M.Udayavani, learned counsel representing Mr.P.Chandra Sekar, learned counsel on record for petitioner and



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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 Crl.M.P.No.1759/2018. Hence, I infer that there is a real possibility of his coming out on bail in M-5 Ennore Police Station Cr.No.169/2023 by filing bail application before the appropriate court, since in similar case bail is 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.118 to 121 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**



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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 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.85 to 87 of the grounds booklet that the literacy level of the detenu is IX Standard. Therefore, it is not merely a case of improper translation it is also a case of giving orders with different contents in English and Tamil version which can baffle a person whose literacy level is IX Standard. This means that (when a detenu is baffled), his right to make an effective representation against the impugned preventive detention order gets impaired.



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

Impugned detention order dated 26.04.2023 bearing reference No.109/BCDFGISSSV/2023 made by the second respondent is set aside and the detenu Thiru. Harish @ Karuppa, male aged 25 years, Son of Thiru. Nelson 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 / No

Neutral Citation : Yes / No

Speaking order / Non-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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