



H.C.P.No.949 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.09.2023

CORAM

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

H.C.P.No.949 of 2023

P.Kumutha

.. Petitioner /
Mother of the detenu

Vs

1. The Secretary to Government,
Home, Prohibition & Excise Department
Secretariat
Fort St.George
Chennai-600 009.
2. The Commissioner of Police
Office of the Commissioner of Police
Avadi
3. The Superintendent of Police
Central Prison, Puzhal
Chennai
4. The Inspector of Police
M-2, Madhavaram Milk Colony Police Station
Chennai

.. Respondents

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Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus to call for the records pertaining to the order of detention passed by the second respondent in the proceedings in No.129/BCDFGISSSV/2023 dated 12.05.2023 and quash the same as illegal and produce the detenu, namely Nethaji, son of Paranthaman, aged 27 years, as goonda, now he is confined in Central Prison, Puzhal-II, Chennai before this Court and set him at liberty.

For Petitioner : Mr.S.Lokesh

For Respondents : Mr.E.Raj Thilak
Additional Public Prosecutor

ORDER

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

When the captioned 'Habeas Corpus Petition' (hereinafter 'HCP' for the sake of convenience and clarity) was listed in the Admission Board on 06.06.2023, the following order was made:

'H.C.P.No.949 of 2023

M.SUNDAR, J.,

and

K.GOVINDARAJAN THILAKAVADI, J.,

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

Captioned Habeas Corpus Petition has been filed in this Court on 01.06.2023 inter alia assailing a detention order dated 12.05.2023 bearing reference No.129/BCDFGISSSV/2023 made by



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'second respondent' [hereinafter 'Detaining Authority' for the sake of convenience and clarity]. To be noted, fourth respondent is the Sponsoring Authority.

2. To be noted, mother of the detenu is the petitioner.

3. Mr.C.Raja, learned counsel on record for habeas corpus petitioner is before us. Learned counsel for petitioner submits that ground case qua the detenu is for alleged offences under Sections 341, 294(b), 336, 427, 392, 397 and 506(ii) of 'Indian Penal Code, 1860 (Act 45 of 1860)' ['IPC' for brevity] in Crime No.217 of 2023 on the file of M-2 Madhavaram Milk Colony Police Station.

4. The aforementioned detention order has been made on the premise that the detenu is a 'Goonda' under Section 2(f) of '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].

5. The detention order has been assailed inter alia on the ground that there is a delay of 28 days in passing the impugned detention order as the detenu was arrested on 14.04.2023 but the impugned detention order has been passed on 12.05.2023.

6. Prima facie case made out for admission. Admit. Issue Rule nisi returnable by four weeks.

7. Mr.R.Muniyapparaj, learned Additional Public Prosecutor, State of Tamil Nadu accepts notice for all respondents. List the captioned Habeas Corpus Petition accordingly.'



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2. The aforementioned Admission Board order captures all essentials that are imperative for appreciating this order and therefore, we are not setting out the same again. However, short forms, short references and abbreviations used in the Admission Board order will continue to be used in the instant order also for the sake of brevity, convenience and clarity.

3. Mr.S.Lokesh, learned counsel on record for petitioner and Mr.E.Raj Thilak, learned Additional Public Prosecutor for all the respondents are before us.

4. In the Admission Board, learned counsel for petitioner projected his campaign against the impugned preventive detention order on the ground that there is a delay of 28 days in passing the impugned preventive detention order as the detenu was arrested on 14.04.2023 and the impugned detention order has been passed only on 12.05.2023 but in the final hearing today, learned counsel for petitioner predicated his campaign against the impugned preventive detention order on the point that subjective satisfaction arrived at by the Detaining Authority qua imminent possibility



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of detenu being enlarged on bail is impaired. Elaborating on the aforementioned point on subjective satisfaction, 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 under section 294(b), 341, 323, 397, 326, 427 and 506(ii) of 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-2 Madhavam Milk Colony Police Station Cr.Nos.120/2023 and 217/2023 cases by filing bail application before the appropriate court, since in similarly placed cases bails are granted by courts after a lapse of time....'

5. Thereafter, learned counsel placed before us the grounds booklet as served on the detenu and drew our attention to page Nos.147 to 150 thereof 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



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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.

6.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.

7.We carefully considered the rival submissions. We are of the view that 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 version. This means that detenu's right to make an effective representation against the impugned preventive detention order gets impaired.

8. We also remind ourselves of Powanammal case i.e., ***Powanammal Vs. State of Tamil Nadu***, wherein Hon'ble Supreme Court addressed to itself this translation point in a similar fact situation. The question which the



Hon'ble Supreme Court addressed to itself 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. '

9. Therefore, this is a case of improper translation as well as providing documents with different contents in two different languages impairing the detenu's right to make an effective representation. To be noted, such a right of a detenu is a constitutional right being a constitutional



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safeguard ingrained in Article 22(5) of the Constitution and infraction of such a safeguard vitiates the impugned preventive detention order rendering it liable for dislodgement in a habeas legal drill. The net sequitur is, the impugned preventive detention order is vitiated and the same deserves to be dislodged.

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

11. Ergo, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 12.05.2023 bearing reference No.129/BCDFGISSSV/2023 made by the second respondent is set aside and the detenu Thiru.Nethaji, male, aged 27 years, son of Thiru.Paranthaman, 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.)
11.09.2023

Index : Yes

Internet : Yes

Neutral Citation : Yes

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P.S: Registry to forthwith communicate this order to Jail authorities in Central Prison, Puzhal, Chennai-66.

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To

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1. The Secretary to Government,
Home, Prohibition & Excise Department
Secretariat
Fort St.George
Chennai-600 009.
2. The Commissioner of Police
Office of the Commissioner of Police
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4. The Inspector of Police
M-2, Madhavaram Milk Colony Police Station
Chennai
5. The Public Prosecutor,
High Court, Madras.



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

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