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H.C.P.No.962 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.09.2023

CORAM

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

H.C.P.No.962 of 2023

Mariyammal

.. Petitioner

Vs

- 1.The State of Tamil Nadu
Rep. By its Secretary,
Home, Prohibition and Excise Department,
Secretariat, Chennai – 9.
- 2.The Commissioner of Police,
Tambaram City,
Chennai.
- 3.The Superintendent of Prison,
Central Prison, Puzhal, Chennai.
- 4.The Inspector of Police,
T-18, Thazhambur Police Station,
Chengalpattu District.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus calling for the records relating to the detention order issued by the second respondent herein in BCDFGISSSV No.17/2023 dated 24.04.2023 and quash the same and direct the respondents herein to produce the body of the detenu namely E.Aravind Kumar @ Aravind, S/o.Elumalai, aged about

Page Nos.1/9



H.C.P.No.962 of 2023

21 years, the son of the petitioner herein and set him at liberty from the third respondent prison viz., the Central Prison, Puzhal, Chennai – 66.

For Petitioner : Mr.G.Mahesh Kumar
For Respondents : Mr.E.Raj Thilak
Additional Public Prosecutor
assisted by Mr.C.Aravind

ORDER

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

This order will now dispose of captioned 'Habeas Corpus Petition' ['HCP' for the sake of brevity, convenience and clarity].

2. When the captioned HCP was listed for Admission on 09.06.2023, the following proceedings/order was made:

'H.C.P.No.962 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 24.04.2023 bearing reference BCDFGISSSV No.17/2023 made by '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.



WEB COPY



H.C.P.No.962 of 2023

3. Mr.G.Magesh Kumar, learned counsel on record for habeas corpus petitioner is before us. Learned counsel expresses regret for not representing the matter in the previous listing. Learned counsel for petitioner submits that ground case qua the detenu is for alleged offences under Sections 294(b), 341, 384, 392, 397 and 506(ii) of 'Indian Penal Code, 1860 (Act 45 of 1860)' ['IPC' for brevity] in Crime No.76 of 2023 on the file of T-18, Thazhambur 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, Sandoffenders, 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 delay in passing the impugned order as the detenu was arrested on 26.03.2023 but the impugned preventive detention order has been passed on 24.04.2023.

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.'

3. The aforementioned proceedings/order dated 09.06.2023 captures all essentials i.e., essential facts imperative for appreciating this final order and therefore we are not setting out the facts again. Suffice to say that the aforementioned Admission Board order dated 09.06.2023 shall now be read as an integral part and parcel of the instant final order. This also means that the short forms, short



H.C.P.No.962 of 2023

references and abbreviations used in the aforementioned Admission Board order will continue to be used in the instant final order also.

4. Before we proceed further, we make it clear that 'detention order dated 24.04.2023 bearing reference BCDFGISSSV No.17/2023 made by the detaining authority' shall hereinafter be referred to as the 'impugned preventive detention order' for the sake of convenience and clarity.

5. Mr.G.Magesh Kumar, learned counsel on record for petitioner and Mr.E.Raj Thilak, learned State Additional Public Prosecutor assisted by Mr.C.Aravind, learned counsel, for all the respondents are before us.

6. As would be evident from paragraph 5 of the 09.06.2023 Admission Board order, at the time of admission, learned counsel for petitioner posited his challenge against the impugned preventive detention order on the ground that there is delay in passing the impugned preventive detention order, however, in the Final Hearing Board today, learned counsel for petitioner changed his line of attack qua his campaign against the impugned preventive detention order

Page Nos.4/9



H.C.P.No.962 of 2023

and submitted that translated copies of the documents relied on by the detaining authority in a language which the detenu is conversant with, have not been furnished to the detenu. Learned counsel for petitioner drew our attention to a portion of paragraph 5 of the grounds of impugned preventive detention order which reads as follows:

'5..... However, it is pertinent to note that in a similar case registered at T-1 Tambaram P.S. Cr.No.1/2021 u/s. 147, 148, 341, 294(b), 336, 307, 506(ii) IPC, bail was granted to the accused Nishanth, Kishore Kumar @ Kishore and Maniyarasu @ Manda Vishnu by the Hon'ble Principal Sessions Judge of Kancheepuram District at Chengalpattu in Crl.M.P.No.258/2021 on 05.02.2021. In the ground case also, no bail application has been filed in his behalf.....'

7. Elaborating on the above submission, learned counsel for petitioner drew our attention to page Nos.167 to 169 of the grounds booklet which contain the similar case bail order relied on by the detaining authority and Tamil translation of the said document has not been furnished to the detenu.



H.C.P.No.962 of 2023

8. We had the benefit of perusing the booklet. We also noticed that similar case bail order forms part of the grounds on which the impugned preventive detention order has been made. As this turns on obtaining scenario which comes to light from the grounds booklet which is before us, learned Prosecutor does not have much of a say.

9. Be that as it may, we are informed that the literacy level of the detenu is 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 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 Hon'ble Supreme Court answered this question has been 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.



H.C.P.No.962 of 2023

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. '

10. We find that the aforementioned **Powanammal** case applies in all fours to the case on hand as we find that similar case bail order 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.

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

12. Ergo, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 24.04.2023 bearing reference BCDFGISSSV No.17/2023 made by the second respondent is set aside



H.C.P.No.962 of 2023

and the detenu Thiru.E.Aravind Kumar @ Aravind, aged 21 years, Son of Thiru.Elumalai, 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.)
26.09.2023

Index : Yes/No
Neutral Citation : Yes/No
mmi

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

To

- 1.The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai – 9.
- 2.The Commissioner of Police,
Tambaram City, Chennai.
- 3.The Superintendent of Prison,
Central Prison, Puzhal, Chennai.
- 4.The Inspector of Police,
T-18, Thazhambur Police Station,
Chengalpattu District.
- 5.The Public Prosecutor,
High Court, Madras.



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H.C.P.No.962 of 2023

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

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H.C.P.No.962 of 2023

26.09.2023

Page Nos.9/9