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H.C.P.No.1015 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.09.2023

CORAM

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

H.C.P.NO.1015 OF 2023

V.Parvathi

.. Petitioner

VS

1.The State of Tamil Nadu
Rep. By its Additional Chief Secretary
to Government
Home, Prohibition and Excise Department
Fort St. George, Chennai – 600 009.

2.The District Collector and
District Magistrate
Mayiladuthurai District,
Mayiladuthurai.

3.The Superintendent of Police
Mayiladuthurai,
Mayiladuthurai District.

4.The Inspector of Police
Pudupattinam Police Station
Mayiladuthurai District.

.. Respondents

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



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relating to the proceedings of the second respondent herein in C.O.C.No.23 of 2023 dated 05.05.2023 and quash the same and produce the petitioner's mother the detenue Thirumathi. Gunasundhari, aged about 48 years, now detained at Special Prison for Women, Thiruchirappalli in TPDA No.1136, before this Court and set her at liberty.

For Petitioner : Mr.B.Harish
for M/s.K.M.Vijayan Associates

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.]

When the captioned 'Habeas Corpus Petition' [hereinafter 'HCP' for the sake of convenience and clarity] came up for admission on 19.06.2023, this Bench made an order and a scanned reproduction of the same is as follows:



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

(Order of the Court was made by M.SUNDAR, J.)

Captioned Habeas Corpus Petition has been filed in this Court on 02.06.2023 *inter alia* assailing a detention order dated 05.05.2023 bearing reference C.O.C.No.23/2023 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, daughter of detainee is the petitioner.

3. Mr.B.Harish learned counsel of M/s K.M.Vijayan Associates (Law Firm) on behalf of petitioner is before us. Learned counsel for petitioner submits that ground case qua the detainee is for alleged offences under Sections 4(1)(aaa), 4(1)(i) read with 4(1-A) of the Tamil Nadu Prohibition Act, 1937 in Crime No.105 of 2023 on the file of Padhupattanam Police Station.

4. The aforementioned detention order has been made on the premise that the detainee is a 'Bootlegger' under Section 2(b) of 'The Tamil Nadu

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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 some of the pages in the grounds booklet furnished to the detainee are illegible which prevented the detainee from making an effective representation.

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

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


[M.S.J.]


[R.S.V.J.]

19.06.2023

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2.The aforementioned order made in the 19.06.2023

Admission listing shall be read as an integral part and parcel of this order which means that the short forms, short references and abbreviations used in the order in the Admission listing shall be used in the instant order also.

3.There are four adverse cases. The ground case which constitutes substantial part of substratum of the impugned preventive detention order is Crime No.105 of 2023 on the file of Pudhupattinam Police Station for alleged offences under Sections 4(1)(aaa), 4(1)(i) read with 4(1-A) of the Tamil Nadu Prohibition Act, 1937. 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.Mr.B.Harish, learned counsel representing M/s.K.M.Vijayan Associates, for petitioner and Mr.E.Raj Thilak, learned State Additional Public Prosecutor assisted by Mr.C.Aravind for all respondents are before us.



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5.To be noted, 'order dated 05.05.2023 bearing reference C.O.C.No.23/2023' made by second respondent / Detaining Authority shall in this order be referred to as 'impugned preventive detention order' for the sake of convenience and clarity.

6.As would be evident from paragraph 5 of the Admission Board order, at the time of admission learned counsel for petitioner predicated his argument that some of the pages in the grounds booklet furnished to the detainee are illegible which prevented the detainee from making an effective representation however in the final hearing today learned counsel predicated his campaign against the impugned preventive detention order on the ground that similar case bail order relied on by the Detaining Authority was not properly translated in a language which the detenu is conversant with. Elaborating on the submission, learned counsel drew our attention to page Nos.164 to 167 of the booklet which is the similar case bail order dated 29.11.2022 made in Cr.M.P.No.4000 of 2022 on the file of learned Principal District and Sessions Judge, Nagapattinam.



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7.As this turns on obtaining facts which are before us learned State Additional Public Prosecutor does not have much of a say.

8.We carefully considered the rival submissions. This Court is informed that the literacy level of the detainee is very low and we find that the detainee has barely managed to sign in Tamil.

9.We had the benefit of perusing the booklet. We also noticed that similar case bail order 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.

10.Be that as it may, we are informed that the detainee is not educated. We are also informed that the detainee 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. '

11.In the case on hand, we find that similar case bail order which has been relied on as part of the grounds of detention qua impugned detention order is a crucial document and not furnishing the same has impaired her constitutional right to make an effective



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representation qua the impugned detention order. We therefore have no hesitation in saying that the impugned detention order deserves to be dislodged.

12.Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 05.05.2023 bearing reference C.O.C.No.23 of 2023 made by the second respondent is set aside and the detenu Tmt.Gunasundhari, aged 48 years, wife of Thiru. Vaithiyanathan, 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.)

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Index : Yes

Neutral Citation : Yes

Speaking

TK

P.S: Registry to forthwith communicate this order to Jail authorities in Special Prison for Women, Thiruchirappalli.



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To

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1. The Additional Chief Secretary
to Government
Home, Prohibition and Excise Department
Fort St. George,
Chennai – 600 009.
2. The District Collector and
District Magistrate
Mayiladuthurai District,
Mayiladuthurai.
3. The Superintendent of Police
Mayiladuthurai,
Mayiladuthurai District.
4. The Inspector of Police
Pudupattinam Police Station
Mayiladuthurai District.
5. The Public Prosecutor
High Court, Madras.



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R.SAKTHIVEL, J.

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