



H.C.P.No.998 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.09.2023

CORAM

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

H.C.P.NO.998 OF 2023

Pavalakodi

.. Petitioner

VS

1.The Secretary to the Government
Home, Prohibition and Excise Department
Secretariat,
Chennai – 60 009.

2.District Collector and District Magistrate
of Villupuram District
Villupuram.

3.The Superintendent of Police
Villupuram District,
Villupuram.

4.The Superintendent of Prison
Central Prison
Cuddalore.

5.The Inspector of Police
Villupuram PEW Police Station
Villupuram District.

.. 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 in connection with the order of detention passed by the second respondent dated 29.05.2023 in Rc.No.C2/36961/2023 against the petitioner husband Krishnan alias Degree, Male aged 55 years, S/o. Jagadeesan, who is confined at Central Prison, Vellore and set aside the same and direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner : Mr.S.Selvakumar
for Mr.D.Balaji

For Respondents : Mr.A.Gokulakrishnan
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 15.06.2023, 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.,)

1. Captioned Habeas Corpus Petition has been filed in this Court on 07.06.2023 *inter alia* assailing a detention order dated 29.05.2023 bearing reference Rc.No.C2/36961/2023 made by 'second respondent' [hereinafter 'Detaining Authority' for the sake of convenience and clarity]. To be noted, 5th respondent is the Sponsoring Authority.

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

3. Mr.D.Balaji, 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 4(1)(aaa) and 4(1-A) of the Tamil Nadu Prohibition Act, 1937 in Crime No.341 of 2023 on the file of Prohibition Enforcement Wing, Villupuram.

4. The aforementioned detention order has been made on the premise that the detenu is a Bootlegger under Section 2(h) of The Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Cyber law offenders, Drug-offenders, Forest-offenders, Goondas, Immoral traffic offenders, Sand-

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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 the similar case relied on by the Detaining Authority is not similar in nature.

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

7. Mr.E.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.,]

15.06.2023

mk

2.The aforementioned order made in the 15.06.2023 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.



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3. There is no adverse case. The ground case which constitutes sole substratum of the impugned preventive detention order is Crime No.341 of 2023 on the file of Prohibition Enforcement Wing, Villupuram for alleged offences under Sections 4(1)(aaa) and 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.S.Selvakumar, learned counsel representing Mr.D.Balaji, learned counsel on record for petitioner and Mr.A.Gokulakrishnan, learned State Additional Public Prosecutor for all respondents are before us.

5. To be noted, 'order dated 29.05.2023 bearing reference Rc.No.C2/36961/2023' 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



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predicated his argument that the similar case relied on by the Detaining Authority is not similar in nature however in the final hearing today learned counsel predicated his campaign against the impugned preventive detention order on the ground that the arrest intimation form was not given to the detenu in a language which the detenu is conversant with. Elaborating on the submission, learned counsel drew our attention to page No.11 of the booklet which is the arrest intimation form.

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. We find from the confession statement of the detenu at page Nos.18 and 19 of the grounds booklet that the literacy level of the detenu is only 3rd Standard in School and that he is a school drop out and the relevant portion reads as under:

'...நான் 3வது வரைக்கும் தான் படிச்சதால
பழைய பஸ் ஸ்டாண்டுல வாழைப்பழம் வியாபாரம்
பண்ணிக்கிட்டு இருந்தேன்...'



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9. We had the benefit of perusing the booklet. We also noticed that arrest intimation form 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 detenu is not educated. 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 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 arrest intimation form 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 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.

12. Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 29.05.2023 bearing reference Rc.No.C2/36961/2023 made by the second respondent is set aside and the detenu Thiru. Krishnan alias Degree, aged 55 years, son of



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Jagadeesan 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.)

13.09.2023

Index : Yes

Neutral Citation : Yes

Speaking

TK

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

To

- 1.The Secretary to the Government
Home, Prohibition and Excise Department
Secretariat, Chennai – 60 009.
- 2.District Collector and District Magistrate
of Villupuram District
Villupuram.
- 3.The Superintendent of Police
Villupuram District, Villupuram.
- 4.The Superintendent of Prison
Central Prison, Cuddalore.
- 5.The Inspector of Police
Villupuram PEW Police Station
Villupuram District.
- 6.The Public Prosecutor
High Court, Madras.



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AND
R.SAKTHIVEL, J.

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