



WEB COPY



H.C.P.No.1004 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.09.2023

CORAM

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

H.C.P.No.1004 of 2023

Dhanasekar Suriya

.. Petitioner

Vs

- 1.The Secretary to the Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai – 9.
- 2.District Collector and District Magistrate
of Tiruvannamalai District,
Tiruvannamalai.
- 3.The Superintendent of Police,
Tiruvannamalai District, Tiruvannamalai.
- 4.The Superintendent of Prison,
Central Prison, Vellore – 2.
- 5.The Inspector of Police,
Tiruvannamalai East Police Station,
Tiruvannamalai & District.

.. Respondents

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 25.05.2023 in D.O. No.50/2023 petitioner/detenu

Page Nos.1/9



H.C.P.No.1004 of 2023

Dhanasekar Suriya, male, aged 27 years, S/o.Dinakaran, 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.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 15.06.2023, the following proceedings/order was made:

'H.C.P.No.1004 of 2023

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 08.06.2023 inter alia assailing a detention order dated 25.05.2023 bearing reference D.O.No.50/2023-C2 made by 'second respondent' [hereinafter 'Detaining Authority' for the sake of



WEB COPY



H.C.P.No.1004 of 2023

convenience and clarity]. To be noted, fifth respondent is the Sponsoring Authority.

2. To be noted, 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 341, 294(b), 307 of 'Indian Penal Code, 1860 (Act 45 of 1860)' ['IPC' for brevity] and subsequently, altered into Sections 341, 294(b), 307, 302 of IPC in Crime No.243 of 2023 on the file of Tiruvannamalai East 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 live and proximate link between the grounds of detention and purpose of detention has snapped as the date of arrest in the ground case is 23.04.2023 but the impugned preventive detention order has been made only on 25.05.2023.

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.'

3. The aforementioned proceedings/order dated 15.06.2023 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



H.C.P.No.1004 of 2023

15.06.2023 shall now be read as an integral part and parcel of the instant final order. This also means that the short forms, short 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 25.05.2023 bearing reference D.O. No.50/2023-C2 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.S.Selvakumar, learned counsel representing the counsel on record for petitioner and Mr.E.Raj Thilak, learned 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 Admission Board order, learned counsel for the petitioner has predicated his campaign against the impugned preventive detention order on the point that live and proximate link between the grounds of detention



H.C.P.No.1004 of 2023

and purpose of detention has snapped, however, today, in the Final Hearing Board, learned counsel for petitioner changed his line of attack qua his campaign against the impugned preventive detention order 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.

7. Elaborating on the above submission, learned counsel for petitioner drew our attention to page Nos.125 to 127 of the grounds booklet which contain the remand order and remand extension orders in the ground case and Tamil translation of the said documents have not been furnished to the detenu.

8. We had the benefit of perusing the booklet. We also noticed that remand order dated 26.04.2023 and remand extension orders dated 10.05.2023 and 17.05.2023 in the ground case are in English and these documents form 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 really does not have much of a



H.C.P.No.1004 of 2023

say.

WEB COPY

9. Be that as it may, we are informed that the literacy level of the detenu is 12th Standard and he is a school drop out. 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.

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 remand order and remand extension orders in the ground case which have been relied on as part of the grounds of detention qua impugned preventive detention order are crucial documents 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 25.05.2023 bearing reference D.O.



H.C.P.No.1004 of 2023

No.50/2023-C2 made by the second respondent is set aside and the detenu Thiru.Dhanasekar Suriya, aged 27 years, son of Thiru.Dinakaran, 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.)
27.09.2023

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

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

To

- 1.The Secretary to the Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai – 9.
- 2.The District Collector and District Magistrate
of Tiruvannamalai District,
Tiruvannamalai.
- 3.The Superintendent of Police,
Tiruvannamalai District, Tiruvannamalai.
- 4.The Superintendent of Prison,
Central Prison, Vellore – 2.
- 5.The Inspector of Police,
Tiruvannamalai East Police Station,
Tiruvannamalai & District.
- 6.The Public Prosecutor,
High Court, Madras.

Page Nos.8/9



WEB COPY



H.C.P.No.1004 of 2023

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

mmi

H.C.P.No.1004 of 2023

27.09.2023

Page Nos.9/9