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HCP No.1321 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.02.2023

Coram

The Hon'ble Mr. Justice **M.SUNDAR**
and

The Hon'ble Mr. Justice **M.NIRMAL KUMAR**

H.C.P. No.1321 of 2022

Shalini

... Petitioner(wife of detenu)

-VS-

1.The Principal Secretary to Government,
Home, Prohibition & Excise Department
Secretariat,
Fort St. George,
Chennai – 600 009.

2.The Commissioner of Police,
Greater Chennai,
Office of Commissioner of Police,
Vepery, Chennai.

3.The Superintendent,
Central Prison, Puzhal,
Chennai.

... Respondents

Habeas Corpus Petition filed under Article 226 of the Constitution of
India, to issue a Writ of Habeas Corpus calling for the records pertaining to



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the order of detention passed by the second respondent herein dated 02.06.2022 made in Detention Order No.134/BCDFGISSSV/22 against the detenu Thiru.Mohanasundar, Male, aged 38 years, S/o.Kabali, who is now confined in Central Prison, Puzhal, Chennai and set aside the same and direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner	..	Mr.R.Shivakumar for Mr.K.G.Raghunath
For Respondents	..	Mr.R.Muniyapparaj Additional Public Prosecutor

ORDER

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

Captioned 'Habeas Corpus Petition' ['HCP' for the sake of convenience and brevity] has been filed by the wife of detenu assailing a 'detention order dated 02.06.2022 bearing reference No.134/BCDFGISSSV/2022' [hereinafter 'impugned detention order' for the sake of convenience and clarity] made by the 'second respondent i.e., jurisdictional Commissioner of Police' [hereinafter 'detaining authority' for the sake of convenience and clarity].



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2. Though very many points have been raised in the affidavit in support of HCP, one point raised by the learned counsel for petitioner finds favour with us and we deem it appropriate to interfere qua the impugned detention order on this one short point.

3. The short point is, in the grounds of detention supplied to the detenu in the form of a booklet [hereinafter 'said booklet' for the sake of convenience and clarity] an order dated 12.04.2022 being an order of remand made by the jurisdictional Magistrate has been annexed at Page No.79 and a scanned reproduction of the same is as follows:



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IN THE COURT OF JUDICIAL MAGISTRATE NO.1,
ALANDUR,

Seivi. R. Vaishnavi, B.A., B.L.,
Judicial Magistrate -I
Alandur.

Cr. NO : 88/2017

Mohana Sundaram
S/O Kabali

...Petitioner...

/Vs/

The Inspector of police
CCB Police Veppery

...Respondent...

ORDER DATE 12/04/2022

On 12.04.2022 at 7.15 p.m in residence the accused named Mohanasundaram has been physically produced before me through Mr. Jeya Vanitha, Inspector, CCB. The Grounds of arrest and provision with regard to the legal assistance was explained to the accused and he stated that he has means to appoint an advocate. Arrest Intimation was given to wife of the accused and he stated the same. The accused was certified as clinically stable in his medical profoma. The accused was checked where no visible injuries found and reported. No complaint of ill-treatment was made against police. Check list perused. The accused stated that till today he has not complied the Hon'ble Madras High Court Order in Cri.O.P 16717/18. In pursual of records prima facie the accusation as against the accused in well found and the reason to remand him is satisfied to me. Hence the accused is remanded in Judicial custody till 25.04.2022.

368/22
S.A. No. 368/22
CCB No. 368/22
Thru. 368/22
Addressed to 368/22
C.A. Phil. No. 368/22
Copy Ready on 27.4.22
Order made on 27.4.22

/True Copy/

Sd/- R. Vaishnavi
Judicial Magistrate No.1,
Alandur.

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8-1-22
EXAMINER OF COPIES
JUDICIAL MAGISTRATE COURT
ALANDUR

Judicial Magistrate Court No.1,
ALANDUR

TRUE COPY

Inspector of Police
Central Crime Branch-II, EDF-III
Greater Chennai Police,
Veppery, Chennai-600 007.





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4.The Tamil translation of the above at Page No.81 of the said booklet

is as follows:

81

ஆலந்தூர், 1வது நீதித்துறை குற்றவியல் நீதிமன்ற நடுவர் முன்பாக,
செல்வி R. வைஷ்ணவி, பிர.பி.எஸ்.,
1வது நீதித்துறை குற்றவியல் நீதிமன்ற நடுவர், ஆலந்தூர்.

கு.எண்.88/2017

மோகனசுந்தர் ஆ/வ 42,
த/பெ கவாஸி

மதுரை

(எதிராக)

காவல் ஆய்வாளர்,
பத்திய குற்றப் பிரிவு,
மேம்பேரி

பதிலளிப்பவர்

உத்தரவு நாள் 12.04.2022

12.04.2022 அன்று இரவு 07.15 மணிவளையில் மேல்கனசுந்தர் என்ற குற்றம் சாட்டப்பட்டவர் சிறிது இன்ஸ்பெக்டர் திருமதி ஜெயலலிதா மூலம் என் முன் ஆஜர் படுத்தப்பட்டார். சட்ட உதவி தொடர்பான பரிசீலனின் அடிப்படையில் குற்றம் சாட்டப்பட்டவருக்கு விளக்கப்பட்டது மற்றும் அவர் ஒரு வழக்கறிஞரை நியமிக்கமாறு கூறினார். குற்றம் சாட்டப்பட்டவரின் மனைவிக்கு கைது அறிவிப்பு கொடுக்கப்பட்டது என்று எதிரி ஆமோதித்தார். அவர் குற்றம் சாட்டப்பட்டவர் மருத்துவ ரீதியாக நிலையானவர் என்று அவரது மருத்துவ விளக்கத்தில் கூற்று அளிக்கப்பட்டது. குற்றம் சாட்டப்பட்டவரின் உடலில் காயங்கள் எதுவும் காணப்படவில்லை. காவல் துறையினரால் மேல்கன முறையில் நடத்தப்பட்டதாக புகார் எழுப்பவில்லை. சரிபார்ப்பு பட்டியல் சரிபாக்கப்பட்டது. இரவு 4: (A) நோட்டீஸ் எதிரிக்கு வழங்கப்பட்டது ஆனால் அவர் முறைப்படுத்தவில்லை. சரிபார்ப்பு பட்டியல் சரிபாக்கப்பட்டது. பதிவுகளை பரிசீலனை செய்ததில் குற்றம் சாட்டப்பட்டவரை காவலில் வைப்பதற்கான காரணம் எனக்கு திருப்தி அளிக்கிறது எனவே எதிரியை 25.04.2022 வரை நீதிமன்றக் காவலில் அடைக்க ஆணையிடப்படுகிறது.

/ உண்மை நகல் /

ஒப்ப/- ஆ. வைஷ்ணவி
1வது நீதித்துறை குற்றவியல் நீதிமன்ற நடுவர்,
ஆலந்தூர்

தலைமை எழுத்தர்

1வது நீதித்துறை குற்றவியல் நீதிமன்ற நடுவர், ஆலந்தூர்

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Inspector of Police
Central Crime Branch-II, EDF-III
Greater Chennai Police,
Vepery, Chennai-600 007.



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5. Adverting to the above, learned counsel for petitioner points out that there is no mention in the order of the jurisdictional Magistrate about Section 41(A) notice but that has been inserted in the translation. There is no difficulty in accepting that the translation is incorrect.

6. Learned Additional Public Prosecutor contended that the literacy level of the detenu is good enough to make out this distinction and therefore, it would not cause any prejudice to the detenu.

7. We carefully considered the submissions. We are of the view that in the case on hand, considering the facts and circumstances of the case, it is not a question of understanding that the translation is incorrect but it is a question of detenu getting baffled as to whether there was any reference to Section 41(A) notice. We also find that a remand order is a very critical document as far as detenu is concerned. This takes us to Clause (5) of Article 22 of the Constitution of India. A preventive detention detenu has a sanctus constitutional right to make an effective representation to State and this Constitutional safeguard is ingrained in Clause (5) of Article 22 of the



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Constitution of India. Any infraction of this Constitutional safeguard would become a ground to dislodge a preventive detention order. In the case on hand, we find that the incorrect translation has hampered the detenu's right to make effective representation. As there is an infraction of constitutional safeguard ingrained in Clause (5) of Article 22 of the Constitution of India, we are inclined to set aside the impugned detention order on this ground.

8. Apropos, the sequitur is, captioned HCP is allowed and the detention order dated 02.06.2022 bearing reference No.134/BCDFGISSSV/2022 made by the second respondent is set aside and the detenu Thiru.Mohanasundar, aged 42 years, son of Thiru.Kabali is directed to be set at liberty forthwith unless required in connection with any other case. There shall be no order as to costs.

(M.S.J.) (M.N.K.,J.)
21.02.2023

Index: Yes/No

Neutral Citation : Yes

cse

Note: Registry to forthwith communicate this order to Jail authorities in Central Prison, Puzhal, Chennai



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To

1. The Principal Secretary to Government,
Home, Prohibition & Excise Department
Secretariat,
Fort St. George,
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2. The Commissioner of Police,
Greater Chennai,
Office of Commissioner of Police,
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3. The Superintendent,
Central Prison, Puzhal,
Chennai.
4. The Public Prosecutor,
High Court of Madras,
Chennai - 104.



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**M.SUNDAR, J.
and
M.NIRMAL KUMAR, J.**

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