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H.C.P.No.1028 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.1028 of 2023

Seetha

.. Petitioner /
Mother of the detenu

Vs

State of Tamil Nadu Rep. by

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

2. The Commissioner of Police
Tambaram City

3. The Superintendent of Prison
Central Prison – II
Puzhal, Chennai

4. The Inspector of Police
T-14, Pallikaranai Police Station
Tambaram Commissionerate

... Respondents

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Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus to call for the records pertaining to the order of detention passed by the 2nd respondent in BCDFGISSSV No.20/2023 dated 18.05.2023 against the petitioner's son detenu Gopalakrishnan @ Gopal @ Vallai, aged 27 years, son of Dhanasekar 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.T.Balaji

For Respondents : Mr.E.Raj Thilak
Additional Public Prosecutor

ORDER

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

When the captioned 'Habeas Corpus Petition' ['HCP' for the sake of brevity] was listed in the Admission Board on 19.06.2023, this Court made the following order:

'H.C.P.No.1028 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



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Court on 09.06.2023 inter alia assailing a detention order dated 18.05.2023 bearing reference BCDFGISSSV No.20/2023 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.

3. Mr.T.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), 336, 397 and 506(ii) of 'Indian Penal Code, 1860 (Act 45 of 1860)' ['IPC' for the sake of brevity] in Crime No.367 of 2023 on the file of T-14 Pallikaranai 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, 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 grounds of detention has not been properly translated in Tamil which prevented the detenu from making an effective representation.

6. Prima facie case made out for admission. Admit. Issue Rule



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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.'

2.The aforementioned Admission Board order captures all essentials that are imperative for appreciating this order and therefore we are not setting out the same again in this order. Suffice to say that aforementioned Admission Board order shall be read as an integral part and parcel of this order. Be that as it may, we are using the short forms, short references and abbreviations used in the Admission Board order in this order also for the sake of convenience and clarity.

3. Mr.T.Balaji, learned counsel on record for petitioner and Mr.E.Raj Thilak, learned State Additional Public Prosecutor for all respondents are before us.

4. As would be evident from paragraph 5 of the Admission Board order, at the time of admission, learned counsel posited his challenge to the impugned preventive detention order on the point that grounds of detention has not been properly translated in Tamil which prevented the detenu from



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making an effective representation but in the final hearing today, Mr.T.Balaji, learned counsel on record for petitioner changed his line of attack and predicated his campaign against the impugned preventive detention order on one point and that point is not providing translated copy of a document (relied on by the detaining authority) in a language which the detenu is conversant with. Elaborating on the submission, learned counsel drew our attention to page Nos.205 to 207 of the booklet which is the Arrest Intimation in the ground case. Tamil translation of this document has not been furnished to the detenu.

5. We had the benefit of perusing the booklet. We also noticed that the Arrest Intimation 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.

6. Be that as it may, we are informed that the literacy level of the detenu is X Standard and he discontinued / 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***



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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. '

7. We find that the aforementioned **Powanammal** case applies in all fours to the case on hand as we find that the Arrest Intimation 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 the impugned preventive detention



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

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

9. Ergo, the sequitur is captioned HCP is allowed. Impugned detention order dated 18.05.2023 bearing reference BCDFGISSSV No.20/2023 made by the second respondent is set aside and the detenu Thiru.D.Gopalakrishnan @ Gopal @ Vallai, male, aged 27 years, son of Thiru.Dhanasekar 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.)
21.09.2023

Index : Yes

Neutral Citation : Yes

gpa

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



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To
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Home, Prohibition and Excise Department
Fort St.George
Chennai – 600 009
2. The Commissioner of Police
Tambaram City
3. The Superintendent of Prison
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5. The Public Prosecutor
Madras High Court
Chennai



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