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H.C.P.No.1029 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.09.2023

Coram

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

H.C.P.No.1029 of 2023

S.Meena

.. Petitioner

VS

1.The Secretary to the Government,
Home, Prohibition and Excise (XVI)Department,
Secretariat, Chennai – 600 009.

2.The District Collector and District Magistrate
Office of the District Collector
Ariyalur District

3. The Superintendent of Police
O/o. Superintendent of Police
Ariyalur District

4. The Superintendent of Prison
Central Prison, Trichy
Trichy

5. The Inspector of Police
Prohibition and Enforcement Wing
Ariyalur District

.. Respondents



H.C.P.No.1029 of 2023

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus to call for the entire records connected with the detention order in Cr.M.P.No.04/2023 dated 03.05.2023 on the file of Respondent No.2 and quash the same and direct the respondents to produce the body and person of my husband named Mr.Suresh @ Soundarrajan, son of Vadivel, aged about 35 years, now confined at Central Prison, Trichy before this Court and set him at liberty.

For Petitioner : Mr.P.Muthamizh Selvakumar

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' (hereinafter 'HCP' for the sake of convenience and clarity) was listed in the Admission Board on 20.06.2023, this Court made the following order:

'H.C.P.No.1029 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 12.06.2023 inter alia assailing a detention order dated 03.05.2023 bearing reference Cr.M.P.No.04/2023 made by 'second respondent' [hereinafter 'Detaining Authority' for the sake of convenience and clarity]. To be noted, fifth respondent is the



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Sponsoring Authority.

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

3. Mr.P.Muthamizh Selvakumar, learned counsel on record for petitioner is before us. Learned counsel for petitioner submits that ground case qua the detenu is for alleged offences under Sections 4(1)(a) read with 4(1-A) of the Tamil Nadu Prohibition Act, 1937 in Crime No.293 of 2023 on the file of Prohibition Enforcement Wing, Ariyalur.

4. The aforementioned detention order has been made on the premise that the detenu is a 'Bootlegger' under Section 2(b) 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 there is 17 days delay in passing the impugned preventive detention order a the detenu was arrested on 16.04.2023 but the impugned preventive detention order has been passed on 03.05.2023.

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.'

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. However, short forms, short references and abbreviations used in the Admission Board order will continue to be used in the instant order also for the sake of brevity, convenience and clarity.



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3. Mr.P.Muthamizh Selvakumar, learned counsel on record for petitioner and Mr.E.Raj Thilak, learned Additional Public Prosecutor for all the respondents are before us.

4. At the time of admission i.e., in the Admission Board, learned counsel for petitioner projected his campaign against the impugned preventive detention order on the ground that there is a delay in passing the impugned preventive detention order as the detenu was arrested on 16.04.2023 but the impugned preventive detention order has been passed on 03.05.2023 but in the final hearing today, learned counsel for petitioner changed his line of attack and submitted that similar case bail order relied on by the Detaining Authority for arriving at the subjective satisfaction that there is an imminent possibility of detenu being enlarged on bail has not been provided in the grounds booklet. Elaborating on the above submission, learned counsel drew our attention to page Nos.130 to 132 of the booklet. No Tamil translation of this document has been furnished to the detenu.

5. 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



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 very low. 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. '



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7. We find that the aforementioned **Powanammal** case applies in

all fours to the case on hand as we find that similar case bail order 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 impugned preventive detention order. We therefore have no hesitation in saying that the impugned preventive detention order deserves to be dislodged.

8. Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 03.05.2023 bearing reference Cr.M.P.No.04/2023 made by the second respondent is set aside and the detenu Thiru.Suresh @ Soundarrajan, aged 35 years, son of Thiru.Vadivel, 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.)
11.09.2023

Index : Yes

Neutral Citation : Yes

gpa

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



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To
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6. The Public Prosecutor,
High Court, Madras.



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

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