



H.C.P.No.1122 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.09.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

H.C.P.No.1122 of 2023

Vimala

.. Petitioner

Vs

1. State of Tamil Nadu
Rep. by its Secretary to Government
Prohibition and Excise Department Home
Chennai – 600 009
2. The District Collector & District Magistrate
Ariyalur District
Ariyalur
3. The Superintendent of Police
Ariyalur District
Ariyalur
4. Superintendent of Central Prison
Thiruchirapalli

Page Nos.1/9



H.C.P.No.1122 of 2023

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5. The Inspector of Police
Meensuruti Police Station
Ariyalur 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 relating to the detenu's detention order passed by the 2nd respondent in proceeding Cr.M.P.No.2/2023 dt.08.03.2023 and set aside the same and produce the detenu Jayamani @ Jayamanikumar, son of Jayakumar, male, aged 27 years, now detained in Central Prison, Trichy before this Court and set him at liberty.

For Petitioner	:	Mr.R.Subramanian
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 10.07.2023, this Court made the following order:

'H.C.P.No.1122 of 2023

M.SUNDAR, J.
AND
R.SAKTHIVEL, J.

Page Nos.2/9



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(Order of the Court was made by M.SUNDAR, J.)

Captioned Habeas Corpus Petition has been filed in this Court on 13.06.2023 inter alia assailing a 'detention order dated 08.03.2023 bearing reference Cr.M.P.No.02/2023' [hereinafter 'impugned preventive detention order' for the sake of convenience and clarity] made by 'second respondent' [hereinafter 'Detaining Authority' for the sake of convenience]. To be noted, fifth respondent is the Sponsoring Authority.

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

3. Mr.R.Subramaniam, 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 294(b), 324 and 307 of 'Indian Penal Code, 1860 (Act 45 of 1860)' ['IPC' for brevity] in Crime No.42 of 2023 on the file of Meensurutti Police Station.

4. The aforementioned impugned preventive 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 impugned preventive detention order has been assailed inter alia on the ground that some of the pages in the booklet furnished to the detenu were illegible which prevented the detenu from making an effective representation and that the detenu has no previous cases of similar 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



H.C.P.No.1122 of 2023

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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.R.Subramanian, 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 some of the pages in the booklet furnished to the detenu were illegible which prevented the detenu from making an effective representation and that the detenu has no previous cases of similar nature but in the final hearing today,



H.C.P.No.1122 of 2023

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Mr.R.Subramanian, 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.126 of the booklet which is the similar case bail order dated 15.04.2021 in CrI.M.P.No.1419 of 2021 relied on by the Detaining Authority for arriving at the subjective satisfaction that there is an imminent possibility of detenu being enlarged on bail. Tamil translation of this similar case bail order has not been furnished to the detenu.

5. We had the benefit of perusing the booklet. We also noticed that the similar case bail order 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 XII Standard and he is a JCB operator. We are also informed that the detenu is conversant only with Tamil. We remind ourselves of

Page Nos.5/9



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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. '

7. We find that the aforementioned ***Powanammal*** case applies in all fours to the case on hand as we find that the 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



H.C.P.No.1122 of 2023

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same in Tamil the lone language known to the detenu has impaired his constitutional right to make an effective representation of the impugned preventive detention 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 08.03.2023 bearing reference Cr.M.P.No.02/2023 made by the second respondent is set aside and the detenu Thiru.Jayamani @ Jayamanikumar, male, aged 27 years, son of Thiru.Jayakumar 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.)

12.09.2023

Index : Yes

Neutral Citation : Yes

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

Page Nos.7/9



H.C.P.No.1122 of 2023

To
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Prohibition and Excise Department Home
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Ariyalur District
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5. The Inspector of Police
Meensuruti Police Station
Ariyalur District
6. The Public Prosecutor
Madras High Court
Chennai



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H.C.P.No.1122 of 2023

M.SUNDAR, J.,
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gpa

H.C.P.No.1122 of 2023

12.09.2023

Page Nos.9/9