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H.C.P.No.1093 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.1093 of 2023

Sasikala

.. Petitioner

Vs

- 1.State of Tamil Nadu
Rep. By its Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai – 9.
- 2.The Commissioner of Police,
Avadi City.
- 3.The Inspector of Police,
T-11 Thirunindravur Police Station,
Avadi City, Chennai.
- 4.The Superintendent,
Central Prison, Puzhal, Chennai.

.. Respondents

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 relating to the petitioner's husband's detention under Tamil Nadu Act 14 of 1982 vide detention order 19.05.2023 on the file of the second respondent herein made in proceedings No.135/BCDFGISSSV/2023 and quash the same as illegal and

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consequently direct the respondents herein to produce the said petitioner's husband namely Mariappan @ Ravi, aged 43 years, son of Manickam, before this Court and set him at liberty, now petitioner's husband detained at Central Prison, Puzhal, Chennai – 66.

For Petitioner : Mr.C.C.Chellappan
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 26.06.2023, the following proceedings/order was made:

'H.C.P.No.1093 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 19.06.2023 inter alia assailing a detention order dated 19.05.2023 bearing reference No.135/BCDFGISSSV/2023 made by



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'second respondent' [hereinafter 'Detaining Authority' for the sake of convenience and clarity]. To be noted, third respondent is the Sponsoring Authority.

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

3. Mr.C.C.Chellappan, 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 341, 294(b), 323, 336, 397 and 506(ii) of 'Indian Penal Code, 1860 (Act 45 of 1860)' [IPC' for the sake of brevity] in Crime No.74 of 2023 on the file of T-11 Thirunindravur 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 Tamil translation of arrest memo and remand order have not been furnished to the detenu which prevented the detenu from making an effective representation.

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 26.06.2023 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 26.06.2023 shall now be read as an integral part and parcel of the



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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 19.05.2023 bearing reference Memo No.135/BCDFGISSSV/2023 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.C.C.Chellappan, learned 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 Tamil translation of arrest memo and remand order have not been furnished to the detenu, however, today, in the Final Hearing Board, learned counsel for petitioner predicated his campaign against



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the impugned preventive detention order on the ground that the subjective satisfaction arrived at by the detaining authority qua imminent possibility of detenu being released on bail in the ground case is impaired.

7. Elaborating on the aforementioned point on subjective satisfaction, learned counsel for petitioner drew our attention to a portion of paragraph 4 of the grounds of impugned preventive detention order, which reads as follows:

'4...In a similar case registered at under section 294(b), 341, 323, 397, 336, 427 and 506(ii) IPC, in J-4 Kotturpuram Police Station Crime No.43/2018, the bail was granted by the Court of Principal Sessions Judge at Chennai in Crl.M.P.No.1759/2018. Hence, I infer that it is very likely of his coming out on bail in T-11 Thirunindravur Police Station Cr. Nos.40/2023, 60/2023, 68/2023 and 74/2023 since, in similarly placed cases, bails were granted by the courts after a lapse of time...'

8. Thereafter, learned counsel placed before us the grounds booklet as served on the detenu and drew our attention to page



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Nos.129 to 132 thereof which contain **Aravind case** bail order (similar case) made in English by the learned Sessions Judge and what according to the Detaining Authority is Tamil translation version of the same i.e., **Aravind** case bail order. A perusal of the bail order in English and the Tamil translated version brings to light that the bail order in English refers to pending cases against the petitioner with specificity as regards calendar years in paragraph (6) but in the Tamil translation, the same is missing.

9. Learned Prosecutor in response to the above argument submitted that only mentioning of the calendar years of pending cases with specificity is missing, the same is clerical error but otherwise the translation is largely correct.

10. We carefully considered the rival submissions. We find from the confession statement of the detenu at page Nos.74 to 77 of the grounds booklet that the literacy level of the detenu is only 8th Standard in School. Therefore, it is not merely a case of improper translation but it is also a case of giving orders with different contents in English and Tamil version which can baffle a person



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whose literacy level is only 8th Standard in School. This means that when a detenu is baffled, his right to make an effective representation against the impugned preventive detention order gets impaired.

11. We also 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 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. '

12. Therefore, this is a case of improper translation as well as providing documents with different contents in two different languages impairing the detenu's right to make an effective representation. To be noted, such a right of a detenu is a constitutional right being a constitutional safeguard ingrained in Article 22(5) of the Constitution and infraction of such a safeguard vitiates the impugned preventive detention order rendering it liable for dislodgement in a habeas legal drill. The net sequitur is, the impugned preventive detention order is vitiated and the same deserves to be dislodged.

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

14. Ergo, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 19.05.2023 bearing reference



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No.135/BCDFGISSSV/2023 made by the second respondent is set aside and the detenu Thiru.Mariappan @ Ravi, aged 43 years, son of Thiru.Manickam, 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
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P.S: Registry to forthwith communicate this order to Jail authorities in Central Prison, Puzhal, Chennai – 600 066.

To

- 1.The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai – 9.
- 2.The Commissioner of Police,
Avadi City.
- 3.The Inspector of Police,
T-11 Thirunindravur Police Station,
Avadi City, Chennai.
- 4.The Superintendent,
Central Prison, Puzhal, Chennai.
- 5.The Public Prosecutor,
High Court, Madras.



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

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