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H.C.P.No.1095 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.09.2023

Coram

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

H.C.P.No.1095 of 2023

S.Radhika

W/o.Somasundaram @ Somu

.. Petitioner / Wife of Detenu

VS

1.The Secretary to the Government of Tamil Nadu,
Home, Prohibition and Excise Department,
Secretariat, Chennai – 600 009.

2.The Commissioner of Police,
Tambaram City, (Goondas Section),
Sholinganallur, Chennai.

3.The Superintendent of Prison,
O/o.Central Prison,
Puzhal, Chennai.

4.The Inspector of Police,
O/o.The Inspector of Police,
T-18, Thazhambur Police Station,
Chennai.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus calling for the records in Memo No.BCDFGISSSV/18/2023 on the file of the second respondent, quash the



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detention order dated 24.04.2023 and direct the respondent to produce of detenu D.Somasundaram @ Somu, son of Devendran detained at the Central Prison, Puzhal under the Tamil Nadu Act 14 of 1982 before this Court and set him at liberty.

For Petitioner : Mr.P.K.Ganesh

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 before this Court in the Admission Board on 26.06.2023, this Court made the following order:



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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 24.04.2023 bearing reference BCDFGISSSV No.18/2023 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, wife of the detenu is the petitioner.

3. Mr.P.K.Ganesh, 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), 341, 384, 392, 397 and 506(ii) of 'Indian Penal Code, 1860 (Act 45 of 1860)' ['IPC' for the sake of brevity] in Crime No.76 of 2023 on the file of T-18, Thazhambur 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,



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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 subjective satisfaction arrived at by the Detaining Authority that there is imminent possibility of the detenu being enlarged on bail is without any material as the detenu has not filed any bail application.

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.

[M.S.J.,]

[R.S.V.J.,]

26.06.2023

mk



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2. The aforementioned 26.06.2023 Admission Board order captures all essentials, i.e., all facts that are imperative for appreciating the final order and therefore, we are not setting out the facts again in this final order. Suffice to say that aforementioned Admission Board order shall be read as an integral part and parcel of this final 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. To be noted, 'detention order dated 24.04.2023 bearing reference BCDFGISSSV No.18/2023 made by the Detaining Authority' shall hereinafter be referred to as 'impugned preventive detention order' in this order for the sake of brevity, convenience and clarity.

4. Mr.P.K.Ganesh, learned counsel on record for petitioner and Mr.E.Raj Thilak, learned State Additional Public Prosecutor for all respondents are before us.

5. Learned counsel for petitioner, in the admission board projected the argument that the subjective satisfaction arrived at by the detaining authority qua imminent possibility of detenu being enlarged on bail is without any



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material but in the final hearing board, learned counsel predicated his campaign against impugned preventive detention order on one point and that one point turns on not providing of translated copy of a document (relied on by the detaining authority) in a language which the detenu is conversant with. Elaborating on the above submission, learned counsel drew our attention to page No.257 of the booklet which is a bail order in a similar case. No Tamil translation of this document has been furnished to the detenu.

6. We had the benefit of perusing the booklet. We also noticed that bail order in a similar case 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.

7. Be that as it may, we are informed that the literacy level of the detenu is 2nd Standard and he is a 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 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. '

8. We find that the aforementioned **Powanammal** case applies in all fours to the case on hand as we find that bail order in a similar case 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.



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

10. Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 24.04.2023 bearing reference BCDFGISSSV No.18/2023 made by the second respondent is set aside and the detenu Thiru.D.Somasundaram @ Somu, aged 29 years, son of Thiru.Devendran, 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.)
14.09.2023

Index : Yes
Neutral Citation : Yes
Speaking order
rsi

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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1. The Secretary to the Government of Tamil Nadu,
Home, Prohibition and Excise Department,
Secretariat, Chennai – 600 009.
2. The Commissioner of Police,
Tambaram City, (Goondas Section),
Sholinganallur, Chennai.
3. The Superintendent of Prison,
O/o. Central Prison,
Puzhal, Chennai.
4. The Inspector of Police,
O/o. The Inspector of Police,
T-18, Thazhambur Police Station,
Chennai.
5. The Public Prosecutor,
High Court, Madras.



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

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