



WEB COPY



H.C.P.No.1133 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.1133 of 2023

Lakshmi

.. Petitioner /
mother of the detenu

Vs

1. The State of Tamil Nadu
Rep. by its Secretary to Government,
Home, Prohibition and Excise Department
Secretariat, Chennai-600 009.
2. The Commissioner of Police
Avadi City, Chennai
3. The Inspector of Police
M-6, Manali Police Station, 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 petitioner's son detention under Tamil Nadu Act 14 of 1982 vide detention order dated 29.03.2023 on the file of the second respondent herein made in proceedings No.79/BCDFGISSSV/2023 and quash the same as

Page Nos.1/10



H.C.P.No.1133 of 2023

illegal and consequently direct the respondents herein to produce the petitioner's son namely Karthik @ Kuruvi Karthik, aged 23 years, son of Sekar before this Court and set him at liberty, now petitioner's son is detained at Central Prison, Puzhal, Chennai – 600 006.

For Petitioner : Mr.C.C.Chellappan

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 30.06.2023, the following order was made:

H.C.P.No.1133 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 23.06.2023 inter alia assailing a detention order dated 29.03.2023 bearing reference No.79/BCDFGISSSV/2023 made by 'second respondent' [hereinafter 'Detaining Authority' for the sake of convenience and clarity]. To be noted, third respondent is the Sponsoring Authority.



WEB COPY



H.C.P.No.1133 of 2023

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

3. *Mr.C.C.Chellappan, 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, 427, 392, 397 and 506(ii) of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] in Crime No.83 of 2023 on the file of M6 Manali 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 grounds that the similar case relied on by the detaining authority is not really similar and Tamil translation of certain documents have not been furnished to the detenu.*

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.'*

,



H.C.P.No.1133 of 2023

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.

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

4. As would be evident from paragraph 5 of aforementioned Admission Board orders, in the captioned HCP, at the time of admission, learned counsel for petitioner posited his challenge to the impugned preventive detention order on the ground that similar case relied on by the detaining authority is not really similar and Tamil translation of certain documents have not been furnished to the detenu. but in the final hearing Board, learned counsel changed his line of attack qua his campaign against the impugned preventive detention order and submitted that subjective



H.C.P.No.1133 of 2023

satisfaction arrived at by the Detaining Authority as regards imminent possibility of detenu being enlarged on bail is clearly impaired. Elaborating on this submission, learned counsel drew our attention to one portion of the grounds of impugned preventive detention orders, which reads as follows:

'4..... In a similar case registered under section 294(b), 341, 323, 397, 336, 427 and 506(ii) of 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 there is real possibility of his coming out on bail in M-6 Manali Police Station Cr.No.83/2023 by filing bail application before the appropriate court, since in similar case bail is granted by the court after a lapse of time.....'

5. Thereafter, learned counsel placed before us the grounds booklet as served on the detenu and drew our attention to page Nos. 96 to 99 thereat 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



H.C.P.No.1133 of 2023

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.

7.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.

8.We carefully considered the rival submissions. We are of the view that 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. This means that detenu's right to make an effective representation against the impugned preventive detention order gets impaired.

9. 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. '

10. 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. The net sequitur is, the impugned preventive detention order is vitiated and the same deserves to be dislodged.



H.C.P.No.1133 of 2023

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

12. Ergo, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 29.03.2023 bearing reference No.79/BCDFGISSSV/2023 made by the second respondent is set aside and the detenu Thiru.Karthik @ Kuruvi Karthik, male, aged 23 years, son of Thiru.Sekar, 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 : No

Internet : No

Neutral Citation : No

gpa

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



H.C.P.No.1133 of 2023

To

WEB COPY

1. The Secretary to Government,
Home, Prohibition and Excise Department
Secretariat, Chennai-600 009.
2. The Commissioner of Police
Avadi City, Chennai
3. The Inspector of Police
M-6, Manali Police Station, Chennai
4. The Superintendent
Central Prison, Puzhal, Chennai
5. The Public Prosecutor,
High Court, Madras.



WEB COPY



H.C.P.No.1133 of 2023

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

gpa

H.C.P.No.1133 of 2023

12.09.2023

Page Nos.10/10