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H.C.P.No.1202 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.08.2023

CORAM

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

H.C.P.NO.1202 OF 2023

Usha .. Petitioner

VS

1.State of Tamil Nadu

Represented by the Secretary to Government
Department of Home, Prohibition and Excise
Secretariat, Fort St. George,
Chennai.

2.The Commissioner of Police

Greater Chennai,
Office of Commissioner of Police
Vepery, Chennai – 7.

3.Superintendent of Police

Central Prison – Puzhal - II
Puzhal, Chennai.

4.Inspector of Police

B-2 Esplanade Police Station
Chennai.

.. Respondents



H.C.P.No.1202 of 2023

PRAYER: Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Habeas Corpus to call for the records in Memo No.55/ BCDFGISSSV/2023 passed by the second respondent on 27.02.2023 on the file of the second respondent and quash the same as illegal and consequently direct the respondent to produce petitioner brother Gopi @ Gopinath Son of Anbu aged about 24 years, before this Court who now detained in Central Prison, Puzhal-II, and set him at liberty.

For Petitioner : Mr.S.Shanmugam
For Respondents : Mr.A.Gokulakrishnan
Additional Public Prosecutor
Assisted by Mr.C.Aravind

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] came up for admission on 11.07.2023, this Bench made an order and a scanned reproduction of the same is as follows:



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H.C.P.No.1202 of 2023

H.C.P.No.1202 of 2023

H.C.P.No.1202 of 2023

M.SUNDAR, J.
and
R.SAKTHIVELU, J.

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

Captioned Habeas Corpus Petition has been filed to this Court on 04.01.2023 *inter alia* assailing a detention order dated 27.02.2023 bearing reference No.55/JC/DFG/SSV/2023 [hereinafter 'impugned preventive detention order' for the sake of convenience and clarity] made by 'second respondent' hereinafter 'Detaining Authority' for the sake of clarity]. To be noted, fourth respondent is the Sponsoring Authority.

2. To be noted, sister of detainee is the petitioner.

3. Mr.A.Munjalal, learned counsel on record for petitioner is before us. Learned counsel for petitioner submits that ground case against detainee is for alleged offences under Sections 341, 294(b), 374, 436, 397, 427 and 506(ii) of Indian Penal Code, 1860 (Act 45 of 1860) "IPC" for the sake of brevity] in Crime No.19 of 2023 on the file of B2 Disputade Police Station.

4. The aforementioned impugned preventive detention order has been made on the premise that the detainee is a 'Goonia' under Section 2(f) of 'The

Page No.1/3



H.C.P.No.1202 of 2023

WEB COPY

H.C.P.No.1202 of 2023

Jamil Nadu: Prevention of Dangerous Activities of Bootleggers, Cyber law offenders, Drug-offenders, Forest-offenders, Goondas, Immoral traffic offenders, Sand-offenders, Sexual-offenders, Shura-grabbers and Video Pirates Act, 1982 (Jamil Nadu Act No.14 of 1982) [hereinafter 'Act' 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 grounds booklet furnished to the detenu are illegible 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.F.Raj Thibak, 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.]

11.07.2023

Page No.25



H.C.P.No.1202 of 2023

2.The aforementioned order made in the 11.07.2023

Admission listing shall be read as an integral part and parcel of this order which means that the short forms, short references and abbreviations used in the order in the Admission listing shall be used in the instant order also.

3.There are five adverse cases and one ground case. The ground case which constitutes substantial part of substratum of the impugned preventive detention order is Crime No.19 of 2023 on the file of B-2 Esplanade Police Station for alleged offences under Sections 341, 294(b), 324, 336, 397, 427 and 506(ii) of IPC. Owing to the nature of the challenge to the impugned preventive detention order, it is not necessary to delve into the factual matrix or be detained further by facts.

4.Mr.S.Shanmugam, learned counsel on record for petitioner and Mr.A.Gokulakrishnan, learned State Additional Public Prosecutor assisted by Mr.C.Aravind, learned counsel for all respondents are before us.

5.To be noted, 'order dated 27.02.2023 bearing reference No.55/BCDFGISSSV/2023' made by second respondent / Detaining



H.C.P.No.1202 of 2023

Authority shall in this order be referred to as 'impugned preventive detention order' for the sake of convenience and clarity.

6.As would be evident from paragraph 5 of the Admission Board order, at the time of admission learned counsel for petitioner predicated his challenge to the impugned preventive detention order on the point that some of the pages in the grounds booklet furnished to the detenu are not legible, the same impaired the detenu's right to make an effective representation, however in the final hearing today learned counsel predicated his campaign against 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 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 impugned preventive detention order which reads as follows:



H.C.P.No.1202 of 2023

'4...In a similar case registered at under section 341, 294(6), 336, 392, 397 and 506(ii) IPC, in K-7 ICF Police Station Crime No.05/2018, the bail was granted by the Court of Sessions, Chennai in Crl.M.P.No.1863/2018. Hence, I infer that there is a real possibility of his coming out on bail by filing bail application in B2 Esplanade Police Station Cr.No.19/2023 before the appropriate court, since in similar case bail was granted by the court 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 Nos.321 and 323 thereat where detenu's remand order made in English by the learned Sessions Judge and what according to the Detaining Authority is Tamil translation of the same have been annexed. On a perusal of the bail order in English and the translated version brings to light that the bail order has been made in English by learned III Metropolitan Magistrate but the Tamil translation says it has been made by learned VII Metropolitan Magistrate and there is no mention about III Metropolitan Magistrate.

9. As the aforementioned point turns on records which are before us learned State Additional Public Prosecutor really does not have much of a say.

10. We carefully considered the rival submissions. We find



H.C.P.No.1202 of 2023

from the confession statement of the detenu at page Nos.239 and 241 of the grounds booklet that the literacy level of detenu is 10th Standard in school and the relevant portion reads as under:

'...நான் 10ம் வகுப்பு வரை கோட்டை ரயில் நிலையம் பின்புறம் உள்ள YMCA பள்ளியில் படித்துள்ளேன்'

11.We had the benefit of perusing the grounds booklet. We also noticed that remand order forms part of the grounds on which the impugned preventive detention order has been made or in other words remand order has been relied on by the Detaining Authority in making the impugned preventive detention order. As this turns on obtaining scenario which comes to light from the grounds booklet which is before us, learned State Additional Public Prosecutor does not have much of a say.

12.Be that as it may, 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 Supreme Court answered this question have been captured in paragraphs 6 and 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. '

13.In the case on hand, we find that remand order which has been relied on as part of the grounds of detention qua impugned detention order is a crucial document and not furnishing proper translation of the



H.C.P.No.1202 of 2023

same in Tamil, the lone language known to the detenu, has impaired his constitutional right (ingrained in Article 22(5)) to make an effective representation qua the impugned detention order. We therefore have no hesitation in saying that the impugned detention order deserves to be dislodged.

14.Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 27.02.2023 bearing reference Memo No.55/BCDFGISSSV/2023 made by the second respondent is set aside and the detenu Thiru. Gopi @ Gopinath, aged 24 years, Son of Thiru. Anbu 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.)

03.08.2023

Index : Yes
Speaking
Neutral Citation: Yes
TK

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



H.C.P.No.1202 of 2023

To

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Department of Home, Prohibition and Excise
Secretariat, Fort St. George,
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- 2.The Commissioner of Police
Greater Chennai,
Office of Commissioner of Police
Vepery, Chennai – 7.
- 3.Superintendent of Police
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- 5.The Public Prosecutor
High Court, Madras.



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H.C.P.No.1202 of 2023

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