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H.C.P.No.1263 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.1263 OF 2023

Rakesh

.. Petitioner

VS.

1.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
T-10, Thirumullaivoyal Police Station
Chennai.

4.The Superintendent
Central Prison
Puzhal,
Chennai.

.. Respondents

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H.C.P.No.1263 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 entire records, relating to petitioner's detention under Tamil Nadu Act 14 of 1982 vide detention order, dated 09.03.2023 on the file of the second respondent herein made in proceedings No.64/BCDFGISSSV/2023 and quash the same as illegal and consequently direct the respondents herein to produce the petitioner namely Rakesh aged 22 years, son of Isak, before this Court and set him at liberty, now petitioner detained at Central Prison, Puzhal, Chennai – 600 066.

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] came up for admission on 18.07.2023, this Bench made an order and a scanned reproduction of the same is as follows:



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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 10.07.2023 *inter alia* assailing a 'detention order dated 09.03.2023 bearing reference No.64/BCDFG1SSSV/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, third respondent is the Sponsoring Authority.

2. To be noted, 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 cum the detenu is for alleged offences under Sections 341, 294(b), 333, 392, 397, 336 and 506(ii) of 'Indian Penal Code, 1860 (Act 45 of 1860)' [IPC for brevity] in Crime No.67 of 2023 on the file of I-10 Thirumullaivoyal Police Station.

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

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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 Tamil translation of some documents (Page Nos.35 and 48) 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.


[M.S.J.]


[R.S.V.J.]

18.07.2023

rk



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2.The aforementioned Admission Board 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.To be noted, 'order dated 09.03.2023 bearing reference No.64/BCDFGISSSV/2023' made by second respondent / Detaining Authority shall in this order be referred to as 'impugned preventive detention order' for the sake of convenience and clarity.

5.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 Tamil



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translation of some documents (page Nos.35 and 48) have not been furnished to the detenu which prevented the detenu from making an effective representation but in the final hearing Board 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.

6.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:

'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 there is a real possibility of his coming out on bail in T-10 Thirumullaivoyal Police Station Crime No.67/2023



by filing bail application before the appropriate court, since in a similar case, the bail was granted by the court after a lapse of time...'

7. Thereafter, learned counsel placed before us the grounds booklet as served on the detenu and drew our attention to page Nos.122 to 125 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 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.

8. 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.

9. We carefully considered the rival submissions. We find from



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the confession statement of the detenu at page Nos.36 and 37 of the grounds booklet that the literacy level of the detenu is IX Standard in School.

Therefore, it is not merely a case of improper translation it is also a case of giving orders with different contents in English and Tamil version which can baffle a person whose literacy level is only IX 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.

10.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. '

11. 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.

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

13. Ergo, the sequitur is, captioned HCP is allowed. Impugned



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preventive detention order dated 09.03.2023 bearing reference

No.64/BCDFGISSSV/2023 made by the second respondent is set aside and the detenu Thiru. Rakesh, male, aged 22 years, son of Thiru. Isak 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

Speaking

TK

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



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To

- 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
T-10, Thirumullaivoyal Police Station
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- 4.The Superintendent
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Puzhal, Chennai.
- 5.The Public Prosecutor
High Court Madras.



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

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