



WEB COPY



H.C.P.No.1328 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.1328 of 2023

Rajeswari
W/o.Krishnan

.. Petitioner /Mother of detenu

VS

1.State of Tamil Nadu
Represented by its Secretary to Government,
Home, Prohibition and Excise Department
Secretariat,
Chennai – 600 009.

2.The District Collector and District Magistrate
Chengalpattu District.

3.The Superintendent of Police,
Chengalpattu District.

4.The Superintendent of Prison,
Central Prison, Puzhal,
Chennai – 600 066.

5.The Inspector of Police,
Chengalpattu Taluk Police Station,
Chengalpattu District.

.. Respondents



H.C.P.No.1328 of 2023

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 son detention under Tamil Nadu Act 14 of 1982 vide detention order dated 16.02.2023 on the file of the second respondent herein and made in proceedings D.O.No.CPT/12/2023 and quash the same as illegal and consequently direct the respondents herein to produce the petitioner's son namely Pasupathi, S/o.Krishnan aged about 23 years before this Court and set the petitioner's son at liberty from detention, where the petitioner's son detained in Central Prison, Puzhal, Chennai.

For Petitioner : Mr.S.Prabhu

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 31.07.2023, this Court made the following order:



H.C.P.No.1328 of 2023

WEB COPY



H.C.P.No.1328 of 2023

H.C.P.No.1328 of 2023

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

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

Mr.S.Prabhu, learned counsel on record for petitioner who is before us, advertng to earlier proceedings dated 24.07.2023 fairly submits that there is no legal provision with regard to number of days within which the preventive detention order has to be made qua date of arrest.

2. Captioned Habeas Corpus Petition has been filed in this Court on 10.07.2023 *inter alia* assailing a 'detention order dated 16.02.2023 bearing reference CPT No.12/2023' [hereinafter 'impugned preventive detention order' for the sake of convenience, clarity and brevity] made by 'second respondent' [hereinafter 'Detaining Authority' for the sake of convenience]. To be noted, fifth respondent is the Sponsoring Authority.

3. To be noted, mother of the detenu is the petitioner.

4. Learned counsel for petitioner submits that ground case qua the detenu is for alleged offence under Sections 302 of 'Indian Penal Code, 1860 (Act 45 of 1860)' [hereinafter 'IPC' for the sake of brevity] in Crime No.631 of 2022 on the file of Chengalpattu Taluk Police Station.



H.C.P.No.1328 of 2023

WEB COPY



H.C.P.No.1328 of 2023

5. The aforementioned impugned preventive 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].

6. 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.

7. *Prima facie* case made out for admission. Admit. Issue Rule nisi returnable by four weeks.

8. 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.]
31.07.2023

mk



H.C.P.No.1328 of 2023

2. The aforementioned 31.07.2023 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 16.02.2023 bearing reference CPT No.12/2023 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.S.Prabhu, 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 some of the pages in the grounds booklet furnished to the detenu are illegible but in the final hearing board, learned counsel predicated



H.C.P.No.1328 of 2023

his campaign against impugned preventive detention order on one point and that one point turns on not providing of translated copy of a documents (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 Nos.51 and 63 of the booklet which are Forensic Sciences Department Report and Arrest Intimation Form, respectively in English. No Tamil translation of these documents have been furnished to the detenu.

6. We had the benefit of perusing the booklet. We also noticed that Forensic Sciences Department Report and Arrest Intimation Form form 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 9th standard in school and he is a school drop out. We are also informed that the detenu is conversant only with Tamil.



8. 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. '

9. We find that the aforementioned ***Powanammal*** case applies in all fours to the case on hand as we find that Forensic Sciences Department Report and Arrest Intimation Form which have been relied on as part of the



H.C.P.No.1328 of 2023

grounds of detention qua impugned preventive detention order are crucial documents and not furnishing the same in Tamil the lone language known to the detenu has impaired his constitutional right to make an effective representation of the impugned detention order. We therefore have no hesitation in saying that the impugned preventive detention order deserves to be dislodged.

10. Ergo, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 16.02.2023 bearing reference CPT No.12/2023 made by the second respondent is set aside and the detenu Thiru.Pasupathi, aged 23 years, son of Thiru.Krishnan 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 / No
Speaking order / Non-speaking order
Neutral Citation : Yes / No
rsi

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



H.C.P.No.1328 of 2023

WEB COPY

- To
- 1.The Secretary to Government,
Home, Prohibition and Excise Department
Secretariat,
Chennai – 600 009.
 - 2.The District Collector and District Magistrate
Chengalpattu District.
 - 3.The Superintendent of Police,
Chengalpattu District.
 - 4.The Superintendent of Prison,
Central Prison, Puzhal,
Chennai – 600 066.
 - 5.The Inspector of Police,
Chengalpattu Taluk Police Station,
Chengalpattu District.
 - 6.The Public Prosecutor,
High Court, Madras.



WEB COPY



H.C.P.No.1328 of 2023

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

rsi

H.C.P.No.1328 of 2023

14.09.2023