



H.C.P.No.1423 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.09.2023

CORAM

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

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Jagapathi

.. Petitioner

Vs

- 1.The Additional Chief Secretary to the Government,
Home, Prohibition and Excise Department,
State of Tamil Nadu, Secretariat,
Fort St. George, Chennai – 9.
- 2.The District Collector and District Magistrate,
Kallakurichi District.
- 3.The Superintendent of Police,
Kallakurichi, Kallakurichi District.
- 4.The Superintendent of Prison,
Central Prison, Cuddalore District.
- 5.The Inspector of Police,
Ulundurpet Prohibition Enforcement Wing,
Kallakurichi District.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus to call for the records relating to the second respondent pertaining to the detention order made in D.O.No.C2/04/2023 dated 28.03.2023 in detaining the detenu



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under Tamil Nadu Act 14/1982 as "Drug Offender" and quash the same and direct the respondents to produce the said detenu namely Thiru.Bapu Naidu @ Petla Appala Naidu, son of Petla Sanyasi, aged about 48 years, who is detained at Central Prison, Cuddalore, before this Court and set him at liberty.

For Petitioner : Mr.V.Sakkarapani
For Respondents : Mr.E.Raj Thilak
Additional Public Prosecutor

ORDER

[Order of the Court was made by **M.SUNDAR, J.,**]

This order will now dispose of captioned 'Habeas Corpus Petition' ['HCP' for the sake of brevity, convenience and clarity].

2. When the captioned HCP was listed for Admission on 07.08.2023, the following proceedings/order was made:

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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 25.07.2023 inter alia assailing a detention order dated 28.03.2023 bearing reference D.O.No.C2/04/2023' [hereinafter 'impugned preventive detention order' for the sake of convenience and clarity] made by 'second respondent' [hereinafter 'Detaining Authority' for the sake of convenience



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and clarity]. To be noted, fifth respondent is the Sponsoring Authority.

2. To be noted, son of the detenu is the petitioner.

3. Mr.V.Sakkarapani, learned counsel on record for habeas corpus petitioner is before us. Learned counsel expresses regret for not representing the matter in the previous listing on 31.07.2023. Learned counsel for petitioner submits that ground case qua the detenu is for alleged offences under Sections 8(c) and 20(b)(ii)(B) of 'Narcotic Drugs and Psychotropic Substances Act, 1985' [hereinafter 'NDPS Act' for the sake of brevity] in Crime No.21 of 2023 on the file of Ulundurpet Prohibition Enforcement Wing altered to Sections 8(c) read with 20(b)(ii)(C) and 29(1) of NDPS Act.

4. The aforementioned detention order has been made on the premise that the detenu is a 'Drug Offender' under Section 2(e) of 'The Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Cyber law offenders, Drug-offenders, Forest-offenders, Goondas, Immoral traffic offenders, Sandoffenders, 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 none of the documents furnished in the grounds booklet were in his mother tongue Telugu, 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. '

3. The aforementioned proceedings/order dated 07.08.2023 captures all essentials i.e., essential facts imperative for appreciating this final order and therefore we are not setting out the facts again. Suffice to say that the aforementioned Admission Board order dated



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07.08.2023 shall now be read as an integral part and parcel of the instant final order. This also means that the short forms, short references and abbreviations used in the aforementioned Admission Board order will continue to be used in the instant final order also.

4. Mr.V.Sakkarapani, learned counsel on record for petitioner and Mr.E.Raj Thilak, learned Additional Public Prosecutor for all the respondents are before us.

5. As would be evident from paragraph 5 of the Admission Board order, the pivotal or in other words, the sheet anchor argument of learned counsel for petitioner is that the mother tongue of the detenu is Telugu, he knows only Telugu but neither the impugned preventive detention order nor the grounds of impugned preventive detention order has been furnished in Telugu. To be noted, as regards the grounds booklet also, though it consists of 62 documents running to 121 pages no document has been translated in Telugu and furnished to the detenu.



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6. Elaborating and furthering his submission in this direction, learned counsel for petitioner drew our attention to a portion of paragraph 3 of the grounds of impugned preventive detention order which reads as follows:

'3.....During the investigation, the Inspector of Police, received information on 14.02.2023 13.00 hours from her informant that on 14.02.2023, one person travelling in Government bus from Vellore to Ulundurpet wearing a white with black colour half handed 'T' shirt and black colour pant carrying Ganja in green and moss colour travel bags with him, he only knows Telugu and he do not speak in Tamil....' (underlining made by this Court for ease of reference and for emphasis)

7. Adverting to the aforementioned portion of the grounds of impugned preventive detention order, learned counsel submitted that the detaining authority himself has clearly mentioned that the detenu knows Telugu only and he cannot even speak in Tamil. It is also pointed out that the detenu has signed every document only in Telugu. The aforementioned point turns heavily on records before us. To be noted, we had the benefit of perusing the grounds booklet. As it turns



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so heavily on records, learned Prosecutor really does not have much of a say. This is more so as the detaining authority himself has recorded this obtaining position in the grounds of impugned preventive detention order.

8. From the narrative thus far, it becomes clear as day light that **Powanammal** principle [**Powanammal Vs. State of Tamil Nadu**] has been breached. In **Powanammal** case, 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



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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. In the light of breach of **Powanammal** principle, we have no hesitation in saying that the impugned preventive detention order is vitiated and is liable to be dislodged in this habeas drill.

10. Ergo, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 28.03.2023 bearing reference D.O.No.C2/04/2023 made by the second respondent is set aside and the detenu Thiru.Bapu Naidu @ Petla Appala Naidu, aged 48 years, Son of Thiru.Petla Sanyasi, 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.)
15.09.2023

Index : Yes/No
Neutral Citation : Yes/No
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P.S: Registry to forthwith communicate this order to Jail authorities in Central Prison, Cuddalore.

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