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H.C.P.No.1466 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**

H.C.P.No.1466 of 2023

Nanthini

.. Petitioner

Vs

- 1.The Additional Secretary to Government of India,
Ministry of Consumer Affairs,
Food and Public Distribution
(Department of Consumer Affairs),
Room No.270, Krishi Bhavan,
New Delhi – 110 001.
- 2.The Secretary to Government,
Co-operation, Food and Consumer
Protection Department,
II Floor, Namakkal Kavignar Maaligai,
Secretariat, Chennai – 9.
- 3.The Commissioner of Police,
Avadi City,
Office of the Commissioner of Police,
Chennai – 54.
- 4.The Superintendent of Prison,
Central Prison II, Puzhal, Chennai – 66.
- 5.The Inspector of Police,
Civil Supplies CID, Thiruvallur Unit.

.. Respondents



H.C.P.No.1466 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 records relating to the detention order passed in Memo No.01/Black Marketing Act/2023, dated 27.06.2023 passed by the third respondent under Section 3(2)(b) r/w 3(1) of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (Central Act No.7 of 1980) and set aside the same and direct the respondents to produce the petitioner's husband Kamesh, S/o.Mani, aged about 28 years, the detenu, now confined in Central Prison II, Puzhal, Chennai before this Court and set the petitioner's husband Kamesh, S/o.Mani, aged about 28 years the detenu herein at liberty.

For Petitioner : Mr.M.Mohamed Saifulla
for Mr.M.Kaveriselvam

For Respondents : Mr.E.Raj Thilak
Additional Public Prosecutor
for R3 to R5

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 04.08.2023, 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 28.07.2023 inter alia assailing a 'detention order dated 27.06.2023 bearing reference Memo No.01/Black Marketing Act/2023' [hereinafter 'impugned preventive detention order' for the sake of convenience and clarity] made by 'third respondent' [hereinafter 'Detaining Authority' for the sake of convenience and clarity]. To be noted, fifth respondent is the Sponsoring Authority.

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

3. Mr.D.Balaji, learned counsel representing the counsel on record for petitioner is before us. Learned counsel for petitioner submits that ground case qua the detenu is for an alleged offence under Section 6(4) of Tamil Nadu Scheduled Commodities (RDCS) Order, 1982 read with Section 7(1)(a)(ii) of Essential Commodities Act, 1955 in Crime No.131 of 2023 on the file of Civil Supplies CID, Tiruvallur Unit.

4. The aforementioned impugned preventive detention order has been made on the premise that the detenu is a 'Black Marketeer' under Section 3(2)(b) read with Section 3(1) of the provisions of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (Act No.7 of 1980).

5. Adverting to paragraph 5 of the grounds of impugned preventive detention order it is submitted that Detaining Authority has mentioned that bail petition is pending but the Criminal Miscellaneous Petition number has been left blank. Learned counsel submits that this is a) non-application of mind, b) baffles the detenu and c) impairs the right of the detenu to make an effective representation against the impugned preventive detention order and such right is a constitutional safeguard ingrained in Article 22(5) of Constitution of India.

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



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7. Mr. E.Raj Thilak, learned Additional Public Prosecutor, State of Tamil Nadu accepts notice for Respondents 3 to 5. Issue notice to Respondents 1 and 2 returnable by 01.09.2023. Private notice permitted. Learned counsel for petitioner is permitted to serve on the Deputy Solicitor General of India Mr.R.Rajesh Veivekananthan. List the captioned Habeas Corpus Petition accordingly '

3. The aforementioned proceedings/order dated 04.08.2023 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 04.08.2023 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.M.Mohamed Saifulla, learned counsel representing the counsel on record for petitioner and Mr.E.Raj Thilak, learned Additional Public Prosecutor for respondents 3 to 5 are before us.

5. As would be evident from paragraph 5 of the Admission Board order, at the time of admission, learned counsel for petitioner



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predicated his challenge to the impugned preventive detention order on the point that the detaining authority has not mentioned the number of the Criminal Miscellaneous Petition which baffles the detenu and impairs the right of the detenu to make an effective representation, but, in the Final Hearing Board today, learned counsel changed his line of attack and submitted that translated copies of the documents relied on by the detaining authority in a language which the detenu is conversant with, have not been furnished to the detenu.

6. Elaborating on the above submission, learned counsel for petitioner drew our attention to page No.50 of the grounds booklet which contains the arrest card in the ground case and Tamil translation of the said document has not been furnished to the detenu.

7. We had the benefit of perusing the booklet. We also noticed that arrest card in the ground case forms part of the grounds on which the impugned preventive detention order has been made. As this turns on obtaining scenario which comes to light from the grounds booklet which is before us, learned Prosecutor does not have much of a say.

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8. Be that as it may, we are informed that the literacy level of the detenu is VI Standard and he is a school drop out. We are also informed that the detenu is a daily wager/coolie and he 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 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 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. '

9. We find that the aforementioned **Powanammal** case applies in all fours to the case on hand as we find that arrest card in the ground case which has been relied on as part of the grounds of detention qua impugned preventive detention order is a crucial document and not furnishing the same in Tamil the lone language known to the detenu has impaired his constitutional right to make an effective representation qua impugned preventive detention order. We therefore have no hesitation in saying that the impugned preventive detention order deserves to be dislodged.

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

11. Ergo, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 27.06.2023 bearing reference No.BM/01/2023 made by the third respondent is set aside and the detenu Thiru.Kamesh, aged 28 years, Son of Thiru.Mani, is directed to



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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

mmi

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

To

- 1.The Additional Secretary to Government of India,
Ministry of Consumer Affairs,
Food and Public Distribution
(Department of Consumer Affairs),
Room No.270, Krishi Bhavan,
New Delhi – 110 001.
- 2.The Secretary to Government,
Co-operation, Food and Consumer
Protection Department,
II Floor, Namakkal Kavignar Maaligai,
Secretariat, Chennai – 9.
- 3.The Commissioner of Police,
Avadi City, Office of the Commissioner of Police,
Chennai – 54.
- 4.The Superintendent of Prison,
Central Prison II, Puzhal, Chennai – 66.
- 5.The Inspector of Police,
Civil Supplies CID, Thiruvallur Unit.
- 6.The Public Prosecutor,
High Court, Madras.

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

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