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H.C.P.No.1526 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.09.2023

CORAM

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

H.C.P.No.1526 of 2023

Amudha

.. Petitioner /
mother of the detenu

Vs

1. The State of Tamil Nadu
Rep. by its Additional Chief Secretary to Government,
Home, Prohibition and Excise Department
Chennai-600 009.
2. The Commissioner of Police
Avadi City
Office of the Commissioner of Police
Avadi, Chennai – 600 054
3. The Superintendent of Police
Central Prison
Puzhal, Chennai – 600 066
4. The Inspector of Police
T3, Korattur Police Station
Chennai – 600 050

.. Respondents

Petition filed under Article 226 of the Constitution of India praying

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for issuance of a writ of habeas corpus calling upon the production of the records relating to the detention order dated 29.12.2022 made in detention order Memo No.196/BCDFGISSSV/2022 passed by the 2nd respondent herein and quash the same and direct the respondents to produce the body or person of detenu Dinesh, son of Ramesh, male, Hindu, aged 23 years, branded as Goonda and now confined in Central Prison, Puzhal, Chenani before this Court and set him at liberty forthwith.

For Petitioner : Mr.K.S.Harish
for Mr.M.Dhivakar

For Respondents : Mr.E.Raj Thilak
Additional Public Prosecutor

O R D E R

[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 in the Admission Board on 10.08.2023, the following order was made:

'H.C.P.No.1526 of 2023

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 31.07.2023 inter alia assailing a 'detention order dated 29.12.2022 bearing reference No.196/BCDFGISSSV/2022' [hereinafter 'impugned preventive



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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, fourth respondent is the Sponsoring Authority.

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

3. Mr.K.S.Harish, learned counsel representing the counsel on record for petitioner submits that ground case qua the detenu is for alleged offences under Sections 341, 294(b), 323, 336, 427, 397, 506(ii) of 'the Indian Penal Code, 1860 (Act 45 of 1860)' [hereinafter 'IPC' for the sake of brevity] in Crime No.626 of 2022 on the file of T-3 Korattur Police Station.

4. 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].

5. The impugned preventive detention order has been assailed inter alia on the ground that family members were not informed about the detention of the detenu.

6. Prima facie case made out for admission. Admit. Issue



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Rule nisi returnable by four weeks.

7. Mr.A.Gokulakrishnan, learned Additional Public Prosecutor, State of Tamil Nadu accepts notice for all respondents. List the captioned Habeas Corpus Petition accordingly.'

2. The aforementioned Admission Board order 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.K.S.Harish, learned counsel on record for petitioner and Mr.E.Raj Thilak, learned Additional Public Prosecutor for all the respondents are before us.

4. As would be evident from paragraph 5 of aforementioned Admission Board order, in the captioned HCP, at the time of admission, learned counsel for petitioner posited his challenge to the impugned preventive detention order on the ground that family members were not



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informed about the detention of the detenu but in the final hearing Board, learned counsel changed his line of attack qua his campaign against the impugned preventive detention order and submitted that subjective satisfaction arrived at by the Detaining Authority as regards imminent possibility of detenu being enlarged on bail is clearly impaired. Elaborating on this submission, learned counsel drew our attention to a portion of paragraph 4 of the grounds of 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) of 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 there is a real possibility of his coming out on bail in T-3 Korattur Police Station Crime No.626/2022 case 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.....'

5. Thereafter, learned counsel placed before us the grounds booklet as served on the detenu and drew our attention to page Nos.283 to 289 thereat



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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.

6.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.

7.We carefully considered the rival submissions. We are of the view that it is not merely a case of improper translation but it is also a case of giving orders with different contents in English and Tamil version. This means that detenu's right to make an effective representation against the impugned preventive detention order gets impaired.



8. We also remind ourselves of Powanammal case i.e., **Powanammal**

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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. '



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9. 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.

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 29.12.2022 bearing reference No.196/BCDFGISSSV/2022 made by the second respondent is set aside and the detenu Thiru.Dinesh, male, aged 23 years, son of Thiru.Ramesh, 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.)

21.09.2023

Index : Yes

Speaking order

Neutral Citation : Yes

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

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To
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Home, Prohibition and Excise Department
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Avadi City
Office of the Commissioner of Police
Avadi, Chennai – 600 054
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High Court, Madras.



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

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