



H.C.P.No.1553 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.09.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

H.C.P.No.1553 of 2023

Elumalai
S/o.Devan

.. Petitioner

Vs

1. State of Tamil Nadu
Represented by
The Secretary to Government
Department of Home, Prohibition and Excise
Secretariat, Fort St.George
Chennai.
2. The District Magistrate and District Collector
Tiruvallur District
Tiruvallur.
3. The Superintendent of Police
Tiruvallur District
Tiruvallur.
4. The Superintendent of Prisons
Central Prison-II
Puzhal, Chennai.

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5. The Inspector of Police
B-1, Tiruvallur Town Police Station
Tiruvallur District.

... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus calling for the records in Memo No.55/BCDFGISSSV/2022 passed by the 2nd respondent on 18.11.2022, on the file of the 2nd respondent and quash the same as illegal and consequently direct the respondents to produce petitioner's son Suriya son of Elumalai aged about 25 years, before this Honble Court, who now detained in central prison II, puzhal, Chennai, and set him liberty.

For Petitioner	:	Mr.S.Shanmugam
For Respondents	:	Mr.E.Raj Thilak
		Additional Public Prosecutor
		Assisted by
		Mr.Aravind .C

ORDER

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

When the captioned 'Habeas Corpus Petition' ['HCP' for the sake of brevity] was listed in the Admission Board on 16.08.2023, this Court made the following order:

'H.C.P.No.1553 of 2023

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



H.C.P.No.1553 of 2023

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

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Captioned Habeas Corpus Petition has been filed in this Court on 03.08.2023 inter alia assailing a 'detention order dated 18.11.2022 bearing reference B.C.D.F.G.I.S.S.S.V No.55/2022' [hereinafter 'impugned preventive detention order' for the sake of convenience and clarity] made by 'second respondent' [hereinafter 'Detaining Authority' for the sake of convenience and clarity]. To be noted, fifth respondent is the Sponsoring Authority.

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

3. Mr.A.Elumalai, learned counsel on record for petitioner is before us. Learned counsel for petitioner submits that ground case qua the detenu is for alleged offences under Sections 457(2) and 380(2) of 'Indian Penal Code, 1860 (Act 45 of 1860)' ['IPC' for brevity] in Crime No.449 of 2022 on the file of Tiruvallur Town 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 grounds that remand order was not



properly translated in Tamil and arrest intimation in Tamil was not 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.'

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 in this final order. Suffice to say that aforementioned Admission Board order shall now be read as an integral part and parcel of this final order. Be that as it may, we shall continue to use 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. Mr.S.Shanmugam, learned counsel on record for petitioner and Mr.E.Raj Thilak, learned State Additional Public Prosecutor for all respondents are before us.



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4. As would be evident from paragraph 5 of the Admission Board order, at the time of admission, learned counsel posited his challenge to the impugned preventive detention order on the point that remand order was not properly translated in Tamil but in the final hearing today, Mr.S.Shanmugam, learned counsel on record for petitioner changed his line of attack and predicated his campaign against the impugned preventive detention order on one point and that point is not providing translated copy of a document (relied on by the detaining authority) in the lone language which the detenu is conversant with. Elaborating on this submission, learned counsel drew our attention to page No.41 of the grounds booklet served on the detenu which is Arrest / Court Surrender Form. Tamil translation of the aforementioned document has not been furnished to the detenu is learned HCP petitioner counsel's say.

5. We had the benefit of perusing the aforementioned grounds booklet. We also noticed that the Arrest / Court Surrender Form 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



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grounds booklet which is before us, learned State Additional Public Prosecutor does not have much of a say.

6. Be that as it may, we are informed that the literacy level of the detenu is 5th standard and he is a school drop out. We are also informed that the detenu is conversant only with Tamil. We remind ourselves of Powanammal principle i.e., ratio in ***Powanammal Vs. State of Tamil Nadu*** ***{(1999) 2 SCC 413}***, 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. 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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7. We find that the aforementioned **Powanammal** case applies in all force to the case on hand as we find that the Arrest / Court Surrender Form 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 of the impugned preventive detention order. To be noted, this constitutional right is ingrained in the form of a safeguard in clause (5) of Article 22 of Constitution of India. We therefore have no hesitation in saying that the impugned preventive detention order deserves to be dislodged in this habeas drill on hand.

8. Before concluding by writing the operative paragraph of this order, we also remind ourselves that preventive detention is not a punishment and HCP is a high prerogative writ.

9. Ergo, the sequitur is captioned HCP is allowed. Impugned preventive detention order dated 18.11.2022 bearing reference B.C.D.F.G.I.S.S.S.V.No.55/2022 made by the second respondent is set aside and the detenu Thiru.Suriya, male, aged 25 years, son of



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Thiru.Elumalai, 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.)

27.09.2023

Index : Yes

Neutral Citation : Yes

Speaking order

mk

P.S: Registry to forthwith communicate this order to Jail authorities in Central Prison-II, Puzhal, Chennai-66.

To

1. State of Tamil Nadu
Represented by The Secretary to Government
Department of Home, Prohibition and Excise
Secretariat, Fort St.George
Chennai.
2. The District Magistrate and District Collector
Tiruvallur District
Tiruvallur.
3. The Superintendent of Police
Tiruvallur District
Tiruvallur.
4. The Superintendent of Prisons
Central Prison-II
Puzhal, Chennai.
5. The Inspector of Police
B-1, Tiruvallur Town Police Station
Tiruvallur District.
6. The Public Prosecutor
Madras High Court, Chennai.

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and
R.SAKTHIVEL, J.,

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