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H.C.P.No.2364 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.04.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

H.C.P.No.2364 of 2022

Mukesh
S/o.Ekambaram

.. Petitioner/Brother of Detenu

Vs.

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

2.The Commissioner of Police,
Avadi City, Chennai.

3.The Inspector of Police,
T-10, Thirumullaivoyal Police Station,
Chennai.

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

.. Respondents

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 petitioner's brother detention under Tamil Nadu Act 14 of 1982 vide



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detention order dated 11.10.2022 on the file of the second respondent herein made in proceedings BCDFGISSSV No.134/2022 and quash the same as illegal and consequently direct the respondents herein to produce the petitioner's brother namely Dhanush, aged 24 years, son of Ekambaram, before this Court and set him at liberty, now petitioner's brother detained at Central Prison, Puzhal, Chennai – 600 066.

For Petitioner : Mr.M.Mohamed Saifullah
for Mr.C.C.Chellappan

For Respondents : Mr.R.Muniyapparaj
Additional Public Prosecutor
assisted by
Mr.M.Sylvester John, Advocate

ORDER

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

Captioned 'Habeas Corpus Petition' ['HCP' for the sake of brevity] has been filed by brother of detenu assailing a 'preventive detention order dated 11.10.2022 bearing reference BCDFGISSSV No.134/2022' [hereinafter 'impugned detention order' for the sake of convenience and brevity]. To be noted, third respondent is the sponsoring authority and second respondent is the detaining authority as impugned detention order has been made by second respondent.



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2. Impugned detention order has been made under '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] on the premise that the detenu is a 'Drug Offender' within the meaning of Section 2(e) of Act 14 of 1982.

3. There are three adverse cases and one ground case. The ground case which is the substratum of the impugned detention order is Crime No.588 of 2022 on the file of T-10 Thirumullaivoyal Police Station for alleged offences under Sections 8(c) read with 20(b)(ii)(B) of 'The Narcotic Drugs and Psychotropic Substances Act, 1985' [hereinafter 'NDPS Act' for the sake of convenience and clarity]. Owing to the nature of the challenge to the impugned detention order, it is not necessary to delve into the factual matrix or be detained further by facts.

4. Mr.M.Mohamed Saifullah, learned counsel representing the counsel on record for petitioner and Mr.R.Muniyapparaj, learned State Additional



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Public Prosecutor assisted by Mr.M.Sylvester John, learned counsel for all respondents are before us.

3. Though very many grounds have been raised in the support affidavit, learned counsel for petitioner at the hearing projected his argument qua challenge to the impugned detention order on one point and that point is not providing correct translated copy of document (relied on by the detaining authority). Elaborating on the submission, learned counsel drew our attention to page Nos.118 and 119 of the booklet which are (i) order of Remand Extension dated 13.09.2022 in English and (ii) order of Remand Extension dated 13.09.2022 in Tamil, respectively. No proper translation of this document has been furnished to the detenu. We had the benefit of perusing the booklet. We also noticed that Remand Extension Order forms part of the ground on which the impugned detention order has been made. English version of the same reads as follows:

'Remand Extension Order Dt:13.09.2022

Accused produced through V.C. Remand extended till 27.09.2022.'



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Tamil translation of aforementioned Remand Extension Order reads as follows:

'அடைப்பு காவல் நீட்டிப்பு உத்திரவு நாள் 13.09.2022

எதிரியை நீதிமன்றத்தில் ஆஜர்படுத்தப்பட்டது. 27.09.2022ம் தேதி வரை
நீதிமன்ற காவல் நீட்டிப்பு செய்யப்பட்டுள்ளது.'

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.

4. In this case, we are not going by the literacy level as this is the Court order and it is the case of legal language. 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:



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'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. '

5. We find that the aforementioned **Powanammal** case applies in all fours to the case on hand as we find that Remand Extension Order which has been relied on as part of the grounds of detention qua impugned detention order is a crucial document and improper translation of the same has impaired detenu's constitutional right to make an effective representation of the impugned detention order. We therefore have no hesitation in saying that the impugned detention order deserves to be dislodged.

6. Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 11.10.2022 bearing reference BCDFGISSSV No.134/2022 made by the second respondent is set aside and the detenu



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Thiru.Dhanush, male, aged 24 years, Son of Thiru.Ekambaram 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.) (M.N.K.,J.)
10.04.2023

Index : Yes / No

Speaking / Non-speaking

Neutral Citation : Yes / No

rsi

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



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M.SUNDAR, J.
and
M.NIRMAL KUMAR, J.

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To

- 1.The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai - 600 009.
- 2.The Commissioner of Police,
Avadi City, Chennai.
- 3.The Inspector of Police,
T-10, Thirumullaivoyal Police Station,
Chennai.
- 4.The Superintendent,
Central Prison,
Puzhal, Chennai – 600 066.
- 4.The Public Prosecutor,
High Court, Madras.

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