



H.C.P.No.2534 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 26.06.2023

CORAM

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

H.C.P.No.2534 of 2022

Indhumathi
W/o.Kalaivanan

... Petitioner /
wife of detenue

Vs

- 1.State of Tamil Nadu
represented by its
Secretary to Government,
Home, Prohibition & Excise Department,
Secretariat, Chennai - 600 009.
- 2.The District Magistrate and District Collector,
Thiruvallur District, Thiruvallur.
- 3.The Superintendent of Police,
O/o.Superintendent of Police,
Thiruvallur, Thiruvallur District.
- 4.The Superintendent of Prison,
Central Prison-II,
Puzhal, Chennai.
- 5.State represented by
The Inspector of Police,
Kavarapettai Police Station,
Thiruvallur District.

... Respondents



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Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus calling for the entire records relating to the petitioner's husband detention under Tamil Nadu Act 14 of 1982 vide detention order dated 21.11.2022 on the file of second respondent herein and made in proceedings BCDFGISSSV No.56/2022 and quash the same as illegal and consequently, direct the respondents herein to produce the petitioner's husband, namely, Kalaivanan, son of Arumugam, aged about 33 years, before this Court and set the petitioner's husband at liberty from detention, now the petitioner's husband detained in Central Prison-II, Puzhal, Chennai.

For Petitioner : Mr.A.J.Magendiraverman
for Mr.R.Sasikumar
For Respondents : Mr.E.Raj Thilak
Additional Public Prosecutor

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 wife of detenu assailing a 'preventive detention order dated 21.11.2022 bearing reference BCDFGISSSV No.56/2022 [hereinafter 'impugned preventive detention order' for the sake of convenience and brevity]. To be noted, fifth respondent is the sponsoring authority and



second respondent is the detaining authority as impugned detention order has been made by second respondent.

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 detinue is a 'Drug Offender' within the meaning of Section 2(e) of Act 14 of 1982.

3. There is no adverse case. The solitary case which is the sole substratum of the impugned detention order is Crime No.227 of 2022 on the file of Kavarapettai Police Station for alleged offences under Sections 8(c) r/w 20(b)(ii)(C), 29(1) 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 preventive detention order, it is not necessary to delve into the factual matrix or be detained further by facts.



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4. Mr.A.J.Magendiraverman, learned counsel appearing on behalf of counsel on record for petitioner and Mr.E.Raj Thilak, learned State Additional Public Prosecutor for all respondents are before us.

5. 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 preventive detention order on one point and that point is not providing translated copy of a document (relied on by the detaining authority) in a language which the detenu is conversant with. Elaborating on the submission, learned counsel drew our attention to pages 49 to 51 of the booklet which is the Forensic Examination Report dated 26.10.2022. Learned counsel submitted that this has been referred to in the impugned preventive detention order by the Detaining Authority. No Tamil translation of this document has been furnished to the detenu. We had the benefit of perusing the booklet. We also noticed that Forensic Examination Report dated 26.10.2022 forms part of the ground on which the impugned preventive detention order has been made. 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.



6. Be that as it may, we are informed that the literacy level of the detenu is X 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 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:

'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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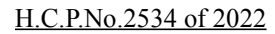
7. In the case on hand, we find that the Forensic Examination Report dated 26.10.2022 which has been relied on as part of the grounds of detention *qua* impugned preventive detention order is a crucial document and not furnishing translation of the same in Tamil, the lone language known to the detenu has impaired his constitutional right to make an effective representation *qua* the impugned preventive detention order. We therefore have no hesitation in saying that the impugned detention order deserves to be dislodged.

Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 21.11.2022 bearing reference BCDFGISSSV No.56/2022 made by the second respondent is set aside and the detenu Thiru.Kalaivanan, aged 33 years, son of Thiru.Arumugam 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.]
26.06.2023

Index : Yes
Neutral Citation : Yes
gm

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



1. The Secretary to Government,
Home, Prohibition & Excise Department,
Secretariat, Chennai - 600 009.
2. The District Magistrate and District Collector,
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Thiruvallur.
3. The Superintendent of Police,
O/o. Superintendent of Police,
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Kavarapettai Police Station,
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6. The Public Prosecutor
Madras High Court,
Chennai.



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and
R.SAKTHIVEL, J.**

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