



H.C.P(MD)No.1149 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.11.2023

CORAM :

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

H.C.P(MD)No.1149 of 2023

Maheshwari

... Petitioner

vs.

1. State of Tamil Nadu,
The Principal Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George, Chennai – 600 009.
2. The Commissioner of Police,
Tiruchirappalli City, Tiruchirappalli.
3. The Superintendent,
Central Prison, Tiruchirappalli.

... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Habeas Corpus, calling for the entire records connected with the detention order of the 2nd respondent in Detention Order in C.No.75/Detention/C.P.O/T.C/2023 dated 28.07.2023 and direct the respondents to produce the person or body of the detenu namely Viji, Male, aged about 23 years son of Arumugam now detained at Central Prison, Tiruchirappalli and set aside the same and direct the respondents to produce the detenu before the Court and set him at liberty.



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For Petitioner : Mr.S.Santhakumar

For Respondents : Mr.A.Thiruvadi Kumar
Additional Public Prosecutor

ORDER

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

When the captioned 'Habeas Corpus Petition' [hereinafter 'HCP' for the sake of brevity] was listed in the Admission Board on 14.09.2023, a Hon'ble Coordinate Division Bench made the following order in the Admission Board:

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AND
D.BHARATHA CHAKRAVARTHY, J.

Admit.

2. Mr.A.Thiruvadikumar, learned Additional Public Prosecutor takes notice for the respondents and seeks time to file counter.

3. Post after eight [8] weeks.

Munday
[S.S.S.R., J.] [D.B.C., J.]

14.09.2023

MIR



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2. It has now become necessary to set out a thumbnail sketch of factual matrix and we do so in the paragraphs infra.

3. Today, the captioned matter is in the Final Hearing Board.

4. Mr.S.Santhakumar, learned counsel on record for petitioner and Mr.A.Thiruvadi Kumar, learned State Additional Public Prosecutor for all respondents are before us.

5. This 'Habeas Corpus Petition' ['HCP' for the sake of brevity] has been filed by mother of the detenu assailing a 'preventive detention order dated 28.07.2023 bearing reference C.No. 75/Detention/C.P.O/T.C/2023' [hereinafter 'impugned preventive detention order' for the sake of brevity and convenience] made by the second respondent Commissioner of Police, who shall hereinafter be referred to as 'detaining authority' for the sake of convenience and clarity. To be noted, sponsoring authority has not been arrayed as a respondent and we find that 'Station House Officer of Woraiyur Police Station', is the sponsoring authority [hereinafter 'sponsoring authority' for convenience and brevity].



6. 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] branding the detenu as a 'Goonda' within the meaning of Section 2(f) of Act 14 of 1982.

7. There is no adverse case. The ground case which constitutes sole substratum of the impugned preventive detention order is Crime No. 926 of 2023 on the file of Woraiyur Police Station, for the alleged offences under Sections 147, 148, 294(b) and 302 of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity]. Considering the nature of the challenge to the impugned detention order, it is not necessary to delve into the factual matrix of the case.

8. Learned counsel on record for petitioner predicated his campaign against the impugned preventive detention order on one point and that point is not providing translated copy of documents (relied on by



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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.124 of the grounds booklet served on the detenu which is a Government Order bearing reference G.O.(D)No.185 [Home, Prohibition and Excise (XVI) Department] dated 13.07.2023. Tamil translation of the Government Order has not been furnished to the detenu is learned HCP petitioner counsel's say.

9. We had the benefit of perusing the aforementioned grounds booklet. We also noticed that the said G.O.(D)No.185 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 grounds booklet which is before us, learned State Additional Public Prosecutor does not have much of a say.

10. Be that as it may, we are informed that the detenu is illiterate. 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 Hon'ble 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.'

11. We find that the aforementioned **Powanammal** case applies in all force to the case on hand as we find that the Government Order 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 against the



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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 the 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.

12. 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.

13. Ergo, the sequitur is captioned HCP is allowed. Impugned preventive detention order dated 28.07.2023 bearing reference C.No. 75/Detention/C.P.O./T.C/2023 made by the second respondent is set aside and the detenu Thiru.Viji, Male, aged 23 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.)
15.11.2023

Index : Yes
Neutral Citation : Yes
PKN



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P.S: Registry to forthwith communicate this order to Jail authorities in Central Prison, Tiruchirappalli. All concerned to act on this order being uploaded in official website of this Court without insisting on certified hard copies. To be noted, this order when uploaded in official website of this Court will be watermarked and will also have a QR code.

To

1. The Principal Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George, Chennai – 600 009.
2. The Commissioner of Police,
Tiruchirappalli City, Tiruchirappalli.
3. The Superintendent,
Central Prison, Tiruchirappalli.
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
5. The Joint Secretary to Government,
Public (Law and Order) Department,
Secretariat, Chennai.



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

PKN

ORDER MADE IN
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DATED : 15.11.2023