



H.C.P(MD)No.1270 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 30.11.2023

Coram

THE HON'BLE MR.JUSTICE **M.SUNDAR**
and
THE HON'BLE MR. JUSTICE **R.SAKTHIVEL**

H.C.P(MD)No.1270 of 2023

Baranikumar

.. Petitioner/Detenuue

VS

1.The Principal Secretary to the Government,
Home, Prohibition and Excise Department,
Fort St. George,
Secretariat,
Chennai – 600 009.

2.The Commissioner of Police,
O/o.Commissioner of Police,
Tiruchirappalli City.

3.The Inspector of Police,
Tiruchirappalli Fort Police Station,
Trichy City.
(Crime No.686 of 2023).

4.The Superintendent of Prison,
Central Prison,
Tiruchirappalli City.

.. Respondents



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Prayer:- Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Habeas Corpus, calling for the records relating to the detention order in C.No.56/Detention/C.P.O/T.C/2023 dated 19.06.2023 and quash the same and consequently direct the respondents to produce the body or person of the detenu namely Baranikumar, S/o.Marimuthu, aged about 22 years now detained as 'GOONDA' at Central Prison, Trichy and set him at liberty forthwith.

For Petitioner : Mr.M.Nadheer Nazar
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 before us on 01.11.2023, this Bench made the following order and a scanned reproduction of the same is as follows:



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H.C.P[MD]No.1270 of 2023

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M.SUNDAR., J.

and

R.SAKTHIVEL., J.

ORDER

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

Adverting to earlier proceedings dated 18.10.2023, Mr.A.Mohamed Hashim, learned Counsel for petitioner submitted that the correct date of the impugned preventive detention order is 19.06.2023 and expresses regret for the wrong date being mentioned in the earlier listing.

2.Captioned Habeas Corpus Petition has been filed in this Court on 11.10.2023 *inter alia* assailing a 'detention order dated 19.06.2023, bearing reference C.No.56/Detention/C.P.O/TC/2023 [hereinafter 'impugned preventive detention order' for the sake of convenience, clarity and brevity] made by 'second respondent' [hereinafter 'Detaining Authority' for the sake of convenience].



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3.To be noted, the detenu is the petitioner.

4.Mr.A.Mohamed Hashim, learned counsel on record for petitioner is before us. Learned counsel for petitioner submits that ground case *qua* the detenu for alleged offences under Sections 457 and 380 of 'the Indian Penal Code, 1860 (Act 45 of 1860)' [hereinafter 'IPC' for the sake of brevity] in Crime No.686 of 2023 on the file of Tiruchirappalli Fort Police Station.

5.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, Shum-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].

6.The impugned preventive detention order has been assailed *inter alia* on the ground that 'live and proximate link between the



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grounds of detention and purpose of detention' has snapped as the detenu was arrested on 26.04.2023 but the impugned preventive detention order has been passed on 19.06.2023.

7. *Prima facie* case made out for admission. Admit. Issue *Rule nisi* returnable by four [4] weeks.

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


[M.S., J.] & [R.S.V., J.]
01.11.2023

MR

2. The aforementioned 01.11.2023 order captures all essentials, i.e., all facts that are imperative for appreciating this final order and therefore, we are not setting out the facts again in this final order. Suffice to say that aforementioned order shall be read as an integral part and parcel of this final order. Be that as it may, we are



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using the short forms, short references and abbreviations used in the order dated 01.11.2023 in this order also for the sake of convenience and clarity.

3.Mr.M.Nadheer Nazar, learned counsel on record for petitioner and Mr.A.Thiruvadi Kumar, learned State Additional Public Prosecutor for all respondents are before us.

4.There are three adverse cases and one ground case. The ground case which constitutes substantial part of substratum of the impugned preventive detention order is Crime No.686 of 2023 on the file of Tiruchirappalli Fort Police Station for alleged offences under Sections 457 and 380 of IPC. Considering the nature of the challenge to the impugned preventive detention order, it is not necessary to delve into the factual matrix of the case.

5.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



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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 Nos.142 and 143 of the grounds booklet served on the detenu which is a Government Order bearing reference G.O.(D)No. 89 Home, Prohibition and Excise (XVI) Department, dated 12.04.2023. Tamil translation of the Government Order has not been furnished to the detenu is learned HCP petitioner counsel's say.

6.We had the benefit of perusing the aforementioned grounds booklet. We also noticed that the said G.O.(D)No.89 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.

7.Be that as it may, we are informed that the literacy level of the detenu is VII 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 Hon'ble Supreme Court addressed itself to is captured in paragraph 6 and the manner in which 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.'

8. We find that the aforementioned ***Powanammal's*** 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*



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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 qua 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 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. To be noted, this Bench has respectfully followed *Powanammal* principle in *Meena's case* reported in Neutral Citation ie., Neutral Citation of this Court [Madras High Court] being **2023:MHC:4860 [H.C.P.(MD)No.1077 of 2023, dated 30.10.2023]**.

9.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.

10.Ergo, the sequitur is, captioned HCP is allowed.
Impugned preventive detention order dated 19.06.2023 bearing



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reference C.No.56/Detention/C.P.O/TC/2023 made by the second

respondent is set aside and the detenu Thiru.Baranikumar, male, aged 22 years, son of Thiru.Marimuthu 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.)
30.11.2023

Index : Yes/No

Neutral Citation : Yes/No

ps

Post Script: (i) Registry to forthwith communicate this order to Jail authorities in Central Prison, Tiruchirappalli.

(ii) All concerned to act on this order being uploaded in official website of this Court without insisting on certified copies. To be noted, this order when uploaded in official website of this Court will be watermarked and will also have a QR code.



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O/o.Commissioner of Police,
Tiruchirappalli City.
 - 3.The Inspector of Police,
Tiruchirappalli Fort Police Station,
Trichy City.
 - 4.The Superintendent of Prison,
Central Prison,
Tiruchirappalli City.
 - 5.The Joint Secretary to Government,
Public (Law and Order) Department,
Secretariat,
Chennai.
 - 6.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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

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