



HCP(MD)No.1275 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 27.11.2023

CORAM:

THE HONOURABLE MR.JUSTICE M.SUNDAR

and

THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

H.C.P.(MD)No.1275 of 2023

Arifkhan @ Arif

: Petitioner

Vs.

1.The Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise Department,
Fort St. George,
Chennai – 600 009.

2.The Commissioner of Police,
Office of the Commissioner,
Trichy.

3.The Superintendent of Prison,
Tirchirappalli Central Prison,
Tiruchirappalli.

: Respondents



HCP(MD)No.1275 of 2023

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus, calling for the entire records connected with the detention order of the respondent No.2 in C.No. 29/Detention/C.P.O/T.C/2023, dated 24.04.2023 and quash the same and direct the respondents to produce the body or person of the detenu by name Arifkhan @ Arif, son of Selvam, aged about 19 years, now detained as 'Goonda' at Trichy Central Prison before this Court and set him at liberty forthwith.

For Petitioner : Mr.R.Alagumani

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

ORDER

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

Captioned 'Habeas Corpus Petition' [hereinafter 'HCP' for the sake of brevity] was listed before us in the Admission Board on 19.10.2023 and a scanned reproduction of the same is as follows:



HCP(MD)No.1275 of 2023

WEB COPY

HCP(MD)No.1275 of 2023

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

ORDER

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

Captioned Habeas Corpus Petition has been filed in this Court on 13.10.2023 *inter alia* assailing a 'detention order' dated 24.04.2023, bearing reference No.C.No. 29/Detention/C.P.O./T.C/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].

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

3.Mr.S.Rameshkumar, 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 392 read with 397 of 'the Indian Penal Code, 1860 (Act 45 of 1860)'



HCP(MD)No.1275 of 2023

WEB COPY

H.C.P.MD.No.1275 of 2023

[hereinafter 'IPC' for the sake of brevity] in Crime No.156 of 2023 on the file of Government Hospital Police Station, Tiruchirappalli City.

4.The aforementioned impugned preventive detention order has been made on the premise that the detainee is a 'Goonda' under Section 2(2) 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, Smugglers 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 ground that 'live and proximate link between the grounds of detention and purpose of detention' has snapped as the detainee was arrested on 21.03.2023 but the impugned preventive detention order has been passed on 24.04.2023.

6.*Prima facie* case made out for admission. Admit. Issue *Rule nisi* returnable by four (4) weeks.



HCP(MD)No.1275 of 2023

WEB COPY

H.C.P(MD)No.1275 of 2023

7.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.]
19.10.2023

PKN

2.The aforementioned 19.10.2023 Admission Board order captures all essentials, i.e., all facts that are imperative for appreciating the final order and therefore, we are not setting out the facts again in this final order. Suffice to say that aforementioned Admission Board order shall be read as an integral part and parcel of this final order. Be that as it may, we are using the short forms, short references and abbreviations used in the Admission Board order in this order also for the sake of convenience and clarity.



HCP(MD)No.1275 of 2023

3.Mr.R.Alagumani, 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 two adverse cases and one ground case. The ground case which constitutes substantial part of substratum of the impugned preventive detention order is Crime No.156 of 2023 on the file of Government Hospital Police Station for alleged offence under Section 392 read with 397 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 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.103 and 104 of the grounds



HCP(MD)No.1275 of 2023

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 IX 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.'



HCP(MD)No.1275 of 2023

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* 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. 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.



HCP(MD)No.1275 of 2023

10.Ergo, the sequitur is captioned HCP is allowed.

Impugned preventive detention order dated 24.04.2023 bearing reference C.No.29/Detention/C.P.O./T.C/2023 made by the second respondent is set aside and the detenu Thiru.Arifkhan @ Arif, male, aged 19 years, son of Thiru.Selvam 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.]

27.11.2023

Index : Yes/No

Internet : Yes/No

Neutral Citation : Yes/No

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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.



HCP(MD)No.1275 of 2023

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2. The Commissioner of Police,
Office of the Commissioner,
Trichy.
3. The Superintendent of Prison,
Tirchirappalli Central Prison,
Tiruchirappalli.
4. The Joint Secretary to Government,
Public (Law and Order) Department,
Secretariat,
Chennai.
5. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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HCP(MD)No.1275 of 2023

M.SUNDAR, J.

and

R.SAKTHIVEL, J.

ps

ORDER MADE IN

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