



H.C.P(MD)No.1311 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 11.12.2023

Coram

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

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Ramya

... Petitioner/
wife of detenu

VS

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

2.The District Magistrate and District Collector,
Office of the District Magistrate and District Collector,
Ariyalur District, Ariyalur.

3.The Superintendent of Prison,
Trichy Central Prison,
Trichy District.

... Respondents

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 of the second respondent in Cr.M.P.No.17/2023 dated 08.10.2023 and quash the same and consequently direct the respondents to produce the body or person of the detenu namely Arjun @ Arjunraj, S/o.Murugan, aged about 34 years now detained as 'GOONDA' at Central Prison, Trichy and set him at liberty forthwith.



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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.]

When the captioned 'Habeas Corpus Petition' [hereinafter 'HCP' for the sake of brevity] was listed before us on 02.11.2023, this Bench made the following order and a scanned reproduction of the same is as follows:





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Indian Penal Code, 1860 (Act 45 of 1860) [hereinafter 'IPC' for the sake of brevity] r/w 35 IPC.

4. 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, 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].

5. The impugned preventive detention order has been assailed *inter alia* on the ground that a similar case bail order furnished in the grounds booklet furnished to the detenu is not similar in nature.

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

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.]

02.11.2023

YSM

2. The aforementioned 02.11.2023 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 using the short forms, short references and abbreviations used in the order dated 02.11.2023 in this order also for the sake of convenience and clarity.

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



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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.189 of 2023 on the file of Thirumanur Police Station for alleged offences under Sections 427, 436, 449, 302 read with 35 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. As would be evident from paragraph 5 of the Admission Board order, at the time of admission, learned counsel on record for petitioner posited his challenge to the impugned preventive detention order on the ground that similar case relied on by the detaining authority is not similar and therefore, subjective satisfaction regarding imminent possibility of detenu being enlarged on bail is impaired but today, learned counsel changed his line of attack and 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.99 and 99 of the grounds booklet served on the detenu which is a Government Order bearing



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reference G.O.(D) No.190 Home, Prohibition and Excise (XVI) Department, dated 13.07.2023. In spite of a specific mention has been made in the representation submitted to the Advisory Board dated 26.10.2023, Tamil translation of the Government Order has not been furnished to the detenu is learned HCP petitioner counsel's say.

6.This Court had the benefit of perusing the grounds booklet and there is no reason to disagree with the learned counsel for petitioner. This point turns heavily on the records and therefore, learned Prosecutor really does not have much of a say.

7.Be that as it may, we are informed that the literacy level of the detenu is V Standard. 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* 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



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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 08.10.2023 bearing reference Cr.M.P.No. 17/2023 made by the second respondent is set aside and the detenu Thiru.Arjun @ Arjunraj, male, aged 34 years, son of Thiru.Murugan 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.)
11.12.2023

Index : Yes/No

Neutral Citation : Yes/No

PKN

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



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(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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- 1.The Additional Chief Secretary to Government,
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Chennai – 600 009.
 - 2.The District Magistrate and District Collector,
Office of the District Magistrate and District Collector,
Ariyalur District, Ariyalur.
 - 3.The Superintendent of Prison,
Trichy Central Prison,
Trichy District.
 - 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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M.SUNDAR, J.
and
R.SAKTHIVEL, J.

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