



H.C.P(MD)No.1355 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 11.12.2023

CORAM :

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

H.C.P(MD)No.1355 of 2023

Duraipalam

... Petitioner

vs.

1. The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai-600 009.

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

3. The Superintendent of Prison,
Palayamkottai Central Prison,
Tirunelveli District.

... 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 respondent No.2 in H.S(M)Confdl.No.87/2023 dated 21.07.2023 and quash the same and direct the respondents to produce the body or person of the detenu by name Balamurugan @ Attack, son of Duraipalam, aged about 36 years, now detained as "GOONDA" at Palayamkottai Central Prison before this Court and set him at liberty forthwith.



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For Petitioner : Mr.S.Rameshkumar
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 07.11.2023, this Bench made the following order:

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

ORDER

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

Captioned Habeas Corpus Petition has been filed in this Court on 02.11.2023 *inter alia* assailing a 'detention order dated 21.07.2023, bearing reference H.S.(M) Confdl. No.87/2023 [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 father of the detenu is the petitioner.

3. Mr.R.Alagumani, 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 341, 294 (b), 302 and 506 (ii) of 'the Indian Penal Code, 1860 (Act 45 of 1860)' [hereinafter 'IPC' for the sake of brevity] in Crime No.131 of 2023 on the file of Eral Police Station.

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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 relied on 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 State Additional Public Prosecutor accepts notice for all respondents. List the captioned Habeas Corpus Petition accordingly.

[M.S.J.] & [R.S.V.]
07.11.2023

MR

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2. The aforementioned Admission Board order captures all essentials that are imperative for appreciating this order and therefore, we are not setting out the same again in this final order. Suffice to say that aforementioned Admission Board order shall now be read as an integral part and parcel of this final order. This also means that short forms, short references and abbreviations used in the Admission Board order will continue to be used in the instant final order also for the sake of brevity, convenience and clarity.



3. There is no adverse case. The sole substratum of impugned preventive detention order is ground case registered in Crime No.131 of 2023 on the file of Eral Police Station, for the alleged offences under Sections 341, 294(b), 302 and 506(ii) 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.

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

5. As would be evident from paragraph 4 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 the point that remand



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extension order which has been relied on in the ground case has been provided only in English language and Tamil translation has not been provided. Elaborating on this submission, learned counsel drew our attention to page No.185 of the grounds booklet served on the detenu which is the remand extension order. Tamil translation of the remand extension 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 VIII 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 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.'

8. 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



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against 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.

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 21.07.2023 bearing reference H.S(M)Confdl.No.87/2023 made by the second respondent is set aside and the detenu Thiru.Balamurugan @ Attack, Male, aged 36 years, son of Thiru.Duraipalam 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
Neutral Citation : Yes
PKN



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P.S: Registry to forthwith communicate this order to Jail authorities in Central Prison, Palayamkottai. 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.

To

1. The Additional Chief Secretary to the Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai-600 009.
2. The District Magistrate and District Collector,
Office of the District Magistrate and District Collector,
Thoothukudi District,
Thoothukudi.
3. The Superintendent of Prison,
Palayamkottai Central Prison,
Tirunelveli District.
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 : 11.12.2023