



H.C.P.No.38 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.07.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

H.C.P.No.38 of 2023

Nirmala

.. Petitioner /
Sister of the detenu

Vs

State rep. by

1. The Secretary to Government
Home, Prohibition and Excise Department
Secretariat
Fort St.George
Chennai – 9.

2. The Commissioner of Police
Salem City

3. The Superintendent of Prison
Central Prison, Salem

4. The Inspector of Police
Annadanapatty Police Station
Salem

.. Respondents

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WEB COPY Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus calling for the records in C.M.P.No.164/Goonda/Salem City/2022 dated 23.12.2022 on the file of the Commissioner of Police, Salem City, the second respondent herein and quash the same as illegal and direct the respondent to produce the detenu Thiru.Viji @ Vilakkumar Vijay, son of Chinnathambi, aged about 36 years, now confined in Central Prison, Salem before this Court and set him at liberty.

For Petitioner : Ms.S.Sengkodi

For Respondents : Mr.E.Raj Thilak
Additional Public Prosecutor

ORDER

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

Captioned 'Habeas Corpus Petition' ['HCP' for the sake of brevity] has been filed by sister of detenu assailing a 'preventive detention order dated 23.12.2022 bearing reference C.M.P.No.164/Goonda/Salem City/2022 [hereinafter 'impugned detention order' for the sake of convenience and brevity]. To be noted, fourth respondent is the sponsoring authority and second respondent is the detaining authority as impugned detention order has been made by second respondent.

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2. 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] on the premise that the detenu is a 'goonda' within the meaning of Section 2(f) of Act 14 of 1982.

3. 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.574 of 2022 on the file of Annadanapatty Police Station for alleged offences under Sections 341, 392 read with 397 and 506(ii) of 'The Indian Penal Code (45 of 1860)' . Owing to the nature of the challenge to the impugned detention order, it is not necessary to delve into the factual matrix or be detained further by facts.

4. Ms.S.Sengkodi, learned counsel on record for petitioner and Mr.E.Raj Thilak, learned State Additional Public Prosecutor for all respondents are before us.



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5. Though very many grounds have been raised in the support affidavit, learned counsel for petitioner at the hearing projected his argument qua challenge to the impugned detention order on one point and that one point turns on incorrect/improper translation. We had the benefit of perusing the booklet. We also noticed that bail order in similar case forms part of the ground on which the impugned detention order has been made. We find the translation inaccurate and capable of baffling a person with low literacy level. As this turns on obtaining scenario which comes to light from the 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 VIII Standard and he is a school drop out. Relevant portion in the confession reads as follows:

'நான் 8ம் வகுப்பு வரை படித்துள்ளேன். நான் குறவர் சமீகத்தை சேர்ந்தவன்.'

We are also informed that the detenu is conversant only with Tamil. We



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remind ourselves of Powanammal case i.e., ***Powanammal Vs. State of Tamil Nadu***, 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. To be noted, ***Powanammal*** case is reported in **(1999) 2 SCC 413** and 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. '

7. In the case on hand, we find that bail order in similar case which has been relied on as part of the grounds of detention qua impugned



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detention order is a crucial document and not furnishing proper translation in Tamil, the lone language known to the detenu has impaired his constitutional right to make an effective representation qua the impugned detention order. We therefore have no hesitation in saying that the impugned detention order deserves to be dislodged.

8. Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 23.12.2022 bearing reference C.M.P.No.164/Goonda/Salem City/2022 made by the second respondent is set aside and the detenu Thiru.Viji @ Vilakkumar Vijay, aged 36 years, son of Thiru.Chinnathambi 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.)

17.07.2023

Index : Yes

Neutral Citation : Yes

gpa

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

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To
WEB COPY

1. The Secretary to Government
Home, Prohibition and Excise Department
Secretariat
Fort St.George
Chennai – 9.
2. The Commissioner of Police
Salem City
3. The Superintendent of Prison
Central Prison, Salem
4. The Inspector of Police
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5. The Public Prosecutor
Madras High Court
Chennai



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and
R.SAKTHIVEL, J.,

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