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H.C.P.No.41 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.06.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

H.C.P.No.41 of 2023

Somaiah
S/o. Ramasamy

.. Petitioner/
Father of the detenu

Vs.

1. The Additional Chief Secretary to Government
Home, Prohibition and Excise Department
Fort St. George, Chennai – 600 009
2. The District Collector and
District Magistrate
Chengalpettu District
Chengalpattu
3. The Superintendent of Police
Chengalpattu District
4. The Superintendent
Central Prison, Puzhal, Chennai -66
5. The Inspector of Police
Thirukazhukundram Police Station
Chengalpattu

..Respondents



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Petition filed under Article 226 of the Constitution of India praying for issuance of a writ order or direction in the nature of WRIT OF HABEAS CORPUS, calling for records relating to the detention order passed by the second respondent pertaining to the order made in CPT No.70 of 2022 dated 12.12.2022 in detaining the detenu under 2(f) of Tamil Nadu Act 14 of 1982 as a Goonda and quash the same and direct the respondent to produce the detenu Gopi @ Gopikrishnan, son of Somaiah, aged about 30 years, who is detained at Central Prison, Puzhal before this Court and set him at liberty.

For Petitioner : Mr.G.Nirmal Krishnan
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 father of detenue assailing a 'preventive detention order dated 12.12.2022 bearing reference CPT No.70 of 2022 [hereinafter 'impugned preventive detention order' for the sake of convenience and brevity]. To be noted, fifth respondent is the sponsoring authority and second respondent is the detaining authority as impugned preventive 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 detenue is a 'Goonda' within the meaning of Section 2(f) of Act 14 of 1982.

3. There is one adverse case and one ground case. The ground case which constitutes substantial part of substratum of the impugned preventive detention order is Crime No.567 of 2022 on the file of Thirukazhukundram Police Station for an alleged offence 392 of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] altered to 395 IPC. 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.



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4. Mr.G.Nirmal Krishnan, learned counsel on record for petitioner and Mr.E.Raj Thilak, learned State Additional Public Prosecutor for all respondents are before us.

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 point is not providing translated copy of documents (relied on by the detaining authority) in a language which the detenu is conversant with. Elaborating on the submission, learned counsel drew our attention to pages 77 to 83 and 29 of the booklet which are rental agreement dated 18.09.2022 and Dog Squad report dated 04.10.2022. No Tamil translation of these documents have been furnished to the detenu. We had the benefit of perusing the booklet. We also noticed that rental agreement and Dog Squad report form part of the ground on which the impugned detention order has been made. As this turns on obtaining scenario which comes to light from the booklet which is before us, learned State Additional Public Prosecutor really does not have much of a say.

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6. Be that as it may, we are informed that the literacy level of the detenu is 10th 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 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 detenu, 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 detenu be set free forthwith unless she is required to be detained in any other case. The appeal is accordingly allowed. '



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7. In the case on hand, we find that rental agreement and Dog Squad report which have been relied on as part of the grounds of detention qua impugned detention order are crucial documents and not furnishing translation of the same 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 12.12.2022 bearing reference CPT No.70 of 2022 made by the second respondent is set aside and the detenu Thiru.Gopi @ Gopikrishnan, male, aged 30 years, son of Thiru.Somaiah 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.)

30.06.2023

Index : Yes

Speaking order

Neutral Citation : Yes

gpa

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

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To

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High Court, Madras.



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

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