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H.C.P.No.53 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.04.2023

CORAM

THE HONOURABLE MR.JUSTICE **M.SUNDAR**
and
THE HONOURABLE MR.JUSTICE **M.NIRMAL KUMAR**

H.C.P.No.53 of 2023

Lakshmi

.. Petitioner

Vs

1.State of Tamil Nadu rep. By
The Secretary to the Government,
Department of Home, Prohibition and Excise,
Secretariat, Fort St. George, Chennai - 9.

2.The Commissioner of Police,
Greater Chennai,
Office of Commissioner of Police,
Vepery, Chennai – 7.

3.Superintendent of Prison,
Central Prison, Puzhal II,
Puzhal, Chennai.

4.Inspector of Police,
Egmore Railway Police Station,
Chennai.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus to call for the records in Memo No.311/BCDFGISSSV/2022 passed by the second respondent on 16.09.2022 on the file of the second respondent and quash the same as illegal and consequently direct the respondents to produce

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petitioner's husband Dhanasekar, son of Duraisamy, aged about 40 years, before this Court, who now detained in Central Prison, Puzhal II and set him at liberty.

For Petitioner : Mr.A.Elumalai
For Respondents : Mr.R.Muniyapparaj
Additional Public Prosecutor
assisted by Mr.M.Sylvester John

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 wife of the detenu assailing a 'preventive detention order dated 16.09.2022 bearing reference BCDFGISSSV No.311/2022' [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.

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



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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.The ground case which is the sole substratum of the impugned detention order is Crime No.320 of 2022 on the file of Egmore Railway Police Station for alleged offences under Sections 341, 332, 324, 307 of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity]. 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. Mr.A.Elumalai, learned counsel on record for petitioner and Mr.R.Muniyapparaj, learned State Additional Public Prosecutor assisted by Mr.M.Sylvester John, learned counsel, for all respondents are before us.

5. Though several grounds have been raised in the support affidavit, learned counsel for petitioner in the arguments at the time



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of hearing pivoted his campaign against the impugned detention order on one point and that one point turns on incorrect/improper translation. The remand order (page No.60 of the grounds booklet) has been made by XVI Metropolitan Magistrate Court as per the Coram and Signature part whereas in Tamil translation at page No.61, both in the Coram and Signature part, it is shown as XVII Metropolitan Magistrate. From the confession statement at page Nos.40 to 43, it comes to light that the detenu is unlettered. The confession statement says that the detenu has never gone to school. We also find that the detenu has affixed his left thumb impression (LTI) even in the confession statement. 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.

6. We remind ourselves of *Powanammal* case which also on facts arose out of the preventive detention case. In *Powanammal* case in similar circumstances i.e., similar fact situation, Honourable Supreme Court addressed to itself the issue of providing a detenu with translated copies in a language in which the detenu is conversant with and answered the same interalia by saying that it is imperative and not



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providing translated copy in a language which the detenu is conversant with vitiates preventive detention. *Powanammal* case i.e.,

Powanammal Vs. State of Tamil Nadu is reported in **(1999) 2 SCC 413** and the relevant paragraphs wherein the question which the Honourable Supreme Court addressed to itself and the manner in which the question was answered are paragraphs 6 and 16 which 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. Applying *Powanammal* principle, we have no hesitation in saying that the impugned detention order in the case on hand deserves to be dislodged.



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8. Apropos, the sequitur is, captioned HCP is allowed. Impugned detention order dated 16.09.2022 bearing reference BCDFGISSSV No.311/2022 made by the second respondent is set aside and the detenu Thiru.Dhanasekar, male, aged 40 years, son of Thiru.Duraisamy 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.) (M.N.K.,J.)
17.04.2023

Index : Yes / No
Neutral Citation : Yes / No
mmi

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

To

- 1.The Secretary to the Government,
Department of Home, Prohibition and Excise,
Secretariat, Fort St. George, Chennai - 9.
- 2.The Commissioner of Police,
Greater Chennai, Office of Commissioner of Police,
Vepery, Chennai - 7.
- 3.The Superintendent of Prison,
Central Prison, Puzhal II,
Puzhal, Chennai.

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4.The Inspector of Police,
Egmore Railway Police Station,
Chennai.

5.The Public Prosecutor,
High Court, Madras.



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**M.SUNDAR, J.,
and
M.NIRMAL KUMAR , J.,**

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