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H.C.P.No.271 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.06.2023

Coram

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

H.C.P.No.271 of 2023

Kalaivani

.. Petitioner

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 City.

.. 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 C.M.P. No.141/Goonda/Salem City/2022 dated 04.11.2022 on the file of the Commissioner of Police, Salem City, the second respondent herein and quash the same as illegal and direct the respondents to produce the detenu, Sathish @ Periya



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Solisan, S/o.Muthuraman, aged about 26 years, now confined at Central Prison, Salem, before this Court and set him at liberty.

For Petitioner : Mr.R.Siranjeevi
For Respondents : Mr.E.Raj Thilak,
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 convenience and clarity) was listed in the Admission Board on 22.02.2023, this Court made the following order:

'Captioned Habeas Corpus Petition has been filed in this Court on 15.02.2023 inter alia assailing a detention order dated 04.11.2022 bearing reference C.M.P.No.141/Goonda/Salem City/2022 made by 'second respondent' [hereinafter 'Detaining Authority' for the sake of convenience and clarity]. To be noted, fourth respondent is the Sponsoring Authority.

2. Mother of the detenu is the petitioner.

3. Mr.R.Siranjeevi, learned counsel on record for habeas corpus petitioner is before us. Learned counsel for petitioner submits that ground case qua the detenu is for alleged offences under Sections 341, 392 read with 397 and 506(ii) of 'The Indian Penal Code (45 of 1860)' [hereinafter



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'IPC' for the sake of convenience and clarity] in Crime No.498 of 2022 on the file of Annadanapatty Police Station.

4. The aforementioned 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 detention order has been assailed inter alia on the ground that the Detaining Authority has not properly intimated to the family members of the detenu about his detention.

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

7. Mr.R.Muniyapparaj, learned Additional Public Prosecutor, State of Tamil Nadu accepts notice for all respondents. List the captioned Habeas Corpus Petition accordingly.'

2. The aforementioned order made in the 22.02.2023 Admission listing shall be read as an integral part and parcel of this order which means that the short forms, short references and abbreviations used in the order in the Admission listing shall be used in the instant order also.



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3. There are three adverse cases. The ground case which constitutes substantial part of substratum of the impugned detention order is Crime No.498 of 2022 on the file of Annadanapatty Police Station for the alleged offences under Sections 341, 392 r/w 397 and 506(ii) 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.

4. Mr.R.Siranjeevi, learned counsel on record for petitioner and Mr.E.Raj Thilak, learned State Additional Public Prosecutor for all the respondents are before us.

5. In the Admission Board, though the point that the detention of the detenu has not been properly intimated to the family members has been raised, in the final hearing today, learned counsel for petitioner projected his argument in his challenge against the impugned preventive detention order on the point that translated copy of a document relied on by the detaining authority in a language which the detenu is conversant with, has not been furnished to the detenu. Elaborating on the submission, learned counsel drew our attention to page Nos.128 and 129 of the booklet



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which is the arrest intimation form. No Tamil translation of this form has been furnished to the detenu. We had the benefit of perusing the booklet. We also noticed that the arrest intimation form forms part of the ground on which the impugned detention order has been made.

6. As this turns on obtaining facts which are 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 10th standard in school 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**. The question which the Honourable Bench of the Supreme Court addressed to itself in a similar fact situation is captured in paragraph 6 and the manner in which a Honourable 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



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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. '

8. In the case on hand, we find that arrest intimation form 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 of the impugned preventive detention order. We therefore have no hesitation in saying that the impugned preventive detention order deserves to be dislodged.

9. Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 04.11.2022 bearing reference C.M.P. No.141/Goonda/Salem City/2022 made by the second respondent is set aside and the detenu Thiru.Sathish @ Periya Solisan, aged 26 years, son of Thiru.Muthuraman, is directed to be set at liberty



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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.)
26.06.2023

Index : Yes

Neutral Citation : Yes

mmi

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

To

- 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 City.
- 5.The Public Prosecutor,
High Court, Madras.



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

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