



H.C.P.No.289 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.289 of 2023

K.Chandrasekar

.. Petitioner

Vs

1.The Secretary to the Government,
Government of Tamil Nadu (Home)
Prohibition and Excise Department,
Fort St.George, Chennai - 9.

2.The District Collector,
District Collector's Office,
Kallakurichi District - 606 202.

3.The Superintendent,
Central Prison,
Vellore District.

4.The Deputy Superintendent of Police,
Kallakurichi Sub Division,
Kallakurichi District.

5.The Inspector of Police,
Chinnasalem Police Station,
Kallakurichi District.

.. Respondents



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Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus directing the respondents to produce the body of detenu namely Vasanthan @ Nithish, aged about 19 years, son of K.Chandrasekar, before this Court who is now detained in the Central Prison, Vellore pursuant to the detention order passed by the 2nd respondent in D.O.No.C2/43/2022 dated 28.08.2022 branding him as Goonda and to call for the records and quash the same and release the detenu at liberty forthwith.

For Petitioner : Mr.T.Shanmugam
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.,**]

This order will now dispose of captioned 'Habeas Corpus Petition' ('HCP' for the sake of brevity).

2. When the captioned HCP was listed in the admission board we made the following order on 01.03.2023:

'Captioned Habeas Corpus Petition (for brevity, 'HCP') has been filed in this Court on 16.02.2023 inter-alia

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assailing a detention order dated 28.08.2022 bearing Reference Number in D.O.No.C2/43/2022 made by the 'second respondent' (hereinafter called as 'Detaining Authority' for the sake of convenience and clarity). To be noted, fifth respondent is the Sponsoring Authority.

2. The father of the detenu is the petitioner.

3. Mr.T.Shanmugam, learned counsel on record for habeas corpus petitioner, is before us. Learned counsel for the petitioner submits that the ground case qua the detenu, is for the alleged offences under Sections 147, 148, 294(b), 323, 324, 332, 353, 436 and 506 (Part-2) of the Indian Penal Code (for brevity, 'IPC') read with Sections 3, 4 and 5 of the Tamil Nadu Public Property (Prevention of Damage and Loss) Act. 1992 in Crime No.237 of 2002 on the file of the Chinnasalem Police Station, Kallakurichi District.

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 called as Act 14 of 1982 for the sake of convenience and clarity).

5. The detention order has been assailed inter-alia on the ground that Page Nos.23, 37, 43, 45 and 47 of the book-let furnished by the Detaining Authority, are illegible and the Detaining Authority ought to have furnished legible copies, which had caused prejudice to the detenu in making effective representation.

6. Prima-facie case made out for admission of the HCP. Accordingly, Admit, Issue Rule Nisi, Call for records, returnable in four weeks.

7. Mr.R.Muniyappa Raj, learned Additional Public Prosecutor, State of Tamil Nadu, High Court, Madras, accepts notice for all the respondents.

8. List the captioned HCP accordingly.'



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3. The aforementioned order captures the crux and gravamen of the matter in a nut shell. Though in the Admission Board, the point that certain pages in the booklet being illegible was projected, today in the final hearing, we are informed by both sides that another accused (Parameshwaran) in the same chain of incidents was clamped with a preventive detention order similar to the impugned preventive detention order. In the case of the other accused namely Thiru.Parameshwaran, his spouse S.Bhavani challenged the similar preventive detention order vide H.C.P. No.1957 of 2022 and after full contest, the same was allowed by this Court vide order dated 30.03.2023 which is reported in neutral citation of this Court in **2023:MHC:1531**. This neutral citation downloaded from the official website is as follows:



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2023:MHC:1531



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H.C.P.No.1957 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.03.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

H.C.P.No.1957 of 2022

S.Bhavani
Wife of Parameshwaran

.. Petitioner

Vs.

1. The State of Tamil Nadu
Rep. by its Secretary to Government
Home, Prohibition and Excise Department
Fort St.George
Chennai-600 009.
2. The District Collector / District Magistrate
Kallakurichi District
Kallakurichi.
3. The Superintendent of Police
Kallakurichi District
Kallakurichi.
4. The Superintendent of Prison
Central Prison
Cuddalore.

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H.C.P.No.1957 of 2022



S. The Inspector of Police
Chinnasalem Police Station
Kallakurichi District.
Kallakurichi.

Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus to produce the body of the detenu namely, Parameshwaran, son of Murugan, aged about 23 years who is confined at Central Prison, Vellore before this Hon'ble Court and set him at liberty forthwith by calling for the records pertaining to the detention order dated 28.08.2022 made in D.O.No.C2/42/2022 passed by the 2nd respondent, quash the same as illegal.

For Petitioner	:	Mr.S.Anbazhagan
For Respondents	:	Mr.R.Muniyapparaj Additional Public Prosecutor assisted by Mr.M.Sylvester John, Advocate

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 28.08.2022 bearing reference D.O.No.C2/42/2022' [hereinafter 'impugned

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H.C.P.No.1957 of 2022

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 the 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 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 is no adverse case. This solitary case which is the sole substratum of the impugned detention order is Crime No.237 of 2022 on the file of Chinnasaalem Police Station for the alleged offences under Sections 147, 148, 294(b), 323, 324, 332, 353, 436, 506(ii) of The Indian Penal Code (45 of 1860) [hereinafter 'IPC' for the sake of convenience and clarity] read

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H.C.P.No.1937 of 2022

with Sections 3, 4 and 5 of the Tamil Nadu Property (Prevention of Damage and Loss) Act, 1992. 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.S.Anbazhagan, 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 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 a document (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 page No.97 of the booklet which is the similar case bail order. No Tamil translation of this order has been furnished to the detenu. We had the benefit of perusing the booklet. We also noticed that the similar case bail order

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H.C.P.No.1957 of 2022



forms 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 does not have much of a say.

6. Be that as it may, we are informed that the literacy level of the detenu is 6th standard in school and he is a school drop out. We are also informed that the detenu is conversant only with Tamil. In this regard, learned counsel drew our attention to page No.68 (confession statement) of the booklet which reads as follows:

'எனக்கு படிப்பு ஏறாததால் ரூகும் வருப்பு படித்துக் கொண்டிருக்கிறபோது மாதியிலேயே நின்று விட்டு என் அப்பா அம்மாவுடனே எங்கள் ஊரிலும் சுற்று வட்டார பகுதிகளிலும் கருப்பு வெட்டும் கூலி வேலை செய்து பிழைத்து வருகிறேன்.'

7. 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 Page Nos.5/8

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H.C.P.No.1957 of 2022

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 detainee, 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 detainee 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 fours to the case on hand as we find that similar case bail order which has been relied on as part of the grounds of detention qua impugned 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

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H.C.P.No.1937 of 2023

an effective representation of the impugned detention order. We therefore have no hesitation in saying that the impugned detention order deserves to be dislodged,

9. Before concluding, we also remind ourselves that preventive detention is not a punishment and HCP is a high prerogative writ.

10. Apropos, the sequitur is, captioned HCP is allowed. Impugned detention order dated 28.08.2022 bearing reference D.O.No.C2/42/2022 made by the second respondent is set aside and the detenu Thiru.Parameshwaran, aged 23 years, son of Murugan, 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.)

30.03.2023

Index : Yes

Speaking

Neutral Citation : Yes

mk

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

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4. It is the further submission of learned counsel for petitioner that the point on which H.C.P. No.1957 of 2022 was allowed i.e., similar bail order not translated though it has been relied on in the impugned preventive detention order, is available to the detenu in the instant case also. This by itself concludes the matter as inevitable sequitur is impugned detention order also deserves to be dislodged. We are reminded of the age old adage 'Sauce to Goose is sauce to Gander too'.

5. Apropos, the sequitur is, captioned HCP is allowed. Impugned detention order dated 28.08.2022 bearing reference D.O.No.C2/43/2022 made by the second respondent is set aside and the detenu Thiru.Vasanthan alias Nithish, aged 19 years, son of Thiru.Chandrasekar, 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

Neutral Citation : Yes

mmi

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

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To

- 1.The Secretary to the Government,
Government of Tamil Nadu (Home)
Prohibition and Excise Department,
Fort St.George, Chennai - 9.
- 2.The District Collector,
District Collector's Office,
Kallakurichi District – 606 202.
- 3.The Superintendent,
Central Prison,
Vellore District.
- 4.The Deputy Superintendent of Police,
Kallakurichi Sub Division,
Kallakurichi District.
- 5.The Inspector of Police,
Chinnasalem Police Station,
Kallakurichi District.
- 6.The Public Prosecutor,
High Court, Madras.



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

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