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H.C.P.No.286 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.07.2023

Coram

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

H.C.P.No.286 of 2023

Anushree Pradeepa

.. Petitioner

VS

The State rep. By its

1.The Secretary to Government,
Home, Prohibition and Excise Department,
Government of Tamil Nadu,
Tamil Nadu Secretariat,
Fort St.George, Chennai – 600 009.

2.The Commissioner of Police,
Salem City, Salem District, Salem.

3.The Superintendent of Prison,
Salem Central Prison, Salem.

4.The Inspector of Police,
Hasthampatty Police Station,
Hasthampatty, Salem District.

.. 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 pertaining to the order of detention dated 07.02.2023 passed by the second respondent in C.M.P. No.8/Goonda/Salem City/2023 and quash the same and produce the detenu Balu @ Balakrishnan, aged about 40 years, S/o.Vasudevan, detained at Central Prison, Salem before this Court and set him at liberty.



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For Petitioner : Dr.S.Manoharan
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 27.02.2023, this Court made the following order:

'Captioned Habeas Corpus Petition has been filed in this Court on 20.02.2023 inter alia assailing a detention order dated 07.02.2023 bearing reference C.M.P.No.8/Goonda/Salem City/2023 made by 'second respondent' [hereinafter 'Detaining Authority' for the sake of convenience and clarity]. To be noted, fourth respondent is the Sponsoring Authority.

2.Wife of the detenu is the petitioner.

3.Mr.S.Manoharan, 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 r/w. 397 and 506(ii) of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] in Crime No.21 of 2023 on the file of Hasthampatty 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 no booklet was provided to the detenu at the time of giving the detention order which prevented the detenu from making an effective representation.



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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 27.02.2023 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.

3. There are three adverse cases. The ground case which constitutes substantial part of substratum of the impugned preventive detention order is Crime No.21 of 2023 on the file of Hasthampatty Police Station for the alleged offences under Sections 341, 392 r/w 397, 506(ii) of IPC. Owing to the nature of the challenge to the impugned preventive detention order, it is not necessary to delve into the factual matrix or be detained further by facts.

4. Dr. S. Manoharan, 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. In the Admission Board, the point that no booklet was provided to the detenu at the time of giving the impugned preventive detention order was projected but in the final hearing today, learned counsel for HCP 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.96 to 100 of the grounds booklet which is the charge sheet/final report under Section 173 of Cr.P.C. In the said charge sheet/final report, at Page No.99 Particulars of Witness Examined was in English and no Tamil translation of this document has been furnished to the detenu. We had the benefit of perusing the grounds booklet. We also noticed that there is a specific reference to this charge sheet in the grounds of detention qua impugned preventive detention order.

6. As this turns on obtaining facts which are before us learned State Additional Public Prosecutor really does not have much of a say.



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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 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. '



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8. In the case on hand, we find that the charge sheet/final report 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 entire charge sheet 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.

10. Ergo, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 07.02.2023 bearing reference C.M.P.No.8/Goonda/Salem City/2023 made by the second respondent is set aside and the detenu Thiru.Balu @ Balakrishnan, aged 40 years, son of Thiru.Vasudevan, 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.)

24.07.2023

Index : Yes/No

Neutral Citation : Yes/No

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

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To

- 1.The Secretary to Government,
Home, Prohibition and Excise Department,
Government of Tamil Nadu,
Tamil Nadu Secretariat,
Fort St.George, Chennai – 600 009.
- 2.The Commissioner of Police,
Salem City, Salem District, Salem.
- 3.The Superintendent of Prison,
Salem Central Prison, Salem.
- 4.The Inspector of Police,
Hasthampatty Police Station,
Hasthampatty, Salem District.
- 5.The Public Prosecutor,
High Court, Madras.



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

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