



WEB COPY



H.C.P.No.438 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.438 of 2023

Savithiri

.. Petitioner

VS

1.The State of Tamil Nadu
rep.by the Secretary Home
Prohibition and Excise Department,
Fort St. George, Chennai – 600 009.

2.The Commissioner of Police
Salem City Police
Salem

3. The Superintendent of Police
Central Prison, Salem

4. The Inspector of Police
Fairlands Police Station
Salem City

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus calling for the records relating to the detention order in C.M.P.No.3/Goonda/Salem City/2023 dated



H.C.P.No.438 of 2023

10.01.2023 passed by the 2nd respondent under the Tamil Nadu Act 14 of 1982 and set aside the same and direct the respondents to produce my son Krishnakumar @ Mister Black aged about 24 years, the detenu now confined in Central Prison, Salem before this Court and set him at liberty.

For Petitioner : Mr.E.Aneesh Vinayak
for Mr.M.Subash

For Respondents : Mr.E.Raj Thilak,
Additional Public Prosecutor

ORDER

[Order of the Court was made by M.SUNDAR, J.]

When the captioned was listed before this Court in the Admission Board on 24.03.2023, this Court made the following order:

'Captioned Habeas Corpus Petition has been filed in this Court on 03.03.2023 inter alia assailing a detention order dated 10.01.2023 bearing Reference C.M.P.No.3/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. *Mother of the detenu is the petitioner.*
3. *Mr.M.Subash, 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 392, 397 and 506(ii) of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] in Crime No.830 of 2022 on the file of Fairlands Police Station.*



WEB COPY

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 grounds that the arrest of the detenu has not been informed to the family members of the detenu and the grounds of detention has not been properly translated in Tamil, which prevented the detenu from making an effective representation.*

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 24.03.2023 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 and one ground case. The ground case which constitutes substantial part of substratum of the impugned preventive detention order is Crime No. 830 of 2022 on the file of Fairlands Police Station for alleged offences under Sections 392, 397 and 506(ii) of IPC. Owing to the nature of the challenge to the impugned



H.C.P.No.438 of 2023

preventive detention order, it is not necessary to delve into the factual matrix or be detained further by facts.

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

5. As would be evident from the Admission Board order dated 24.03.2023, at the time of admission, learned counsel for HCP petitioner projected the point that the arrest of the detenu has not been informed to the family members of the detenu and the grounds of detention has not been properly translated in Tamil, which prevented the detenu from making an effective representation but in the Final Hearing Board today, Mr.E.Aneesh Vinayak, learned counsel representing the counsel on record for petitioner submitted that pages 23 and 26 of the grounds booklet are not readable.

6. The aforementioned point turns heavily on records and therefore learned Prosecutor really does not have much of a say.

7. This Court had the benefit of perusing the grounds booklet and this Court is of the view that the aforementioned pages which contain list of properties, are not readable. A scanned reproduction of pages 23 and 26 are as follows:



H.C.P.No.438 of 2023

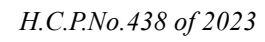
WEB COPY

23

25/11/23
H.C.P.No.438 of 2023
23

25/11/23
H.C.P.No.438 of 2023
23

|| a.embana pash ||
25/11/23
GurGuram... 23



251111
to the mother
body only
- u -

சுருதிநாட்டினர்

<https://www.mhc.tn.gov.in/judis>
6/9



H.C.P.No.438 of 2023

This means that right of the detenu to make an effective representation as against the impugned preventive detention order has been impaired. Such a right is sanctus constitutional right ingrained in Article 22(5) of the Constitution of India. This constitutional right of the detenu has been subjected to infraction. This has vitiated the impugned preventive detention order. Therefore, the impugned preventive detention order is liable to be dislodged.

8. Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 10.01.2023 bearing reference C.M.P.No.3/Goonda/Salem City/2023 made by the second respondent is set aside and the detenu Thiru.Krishnakumar @ Mister Black, aged 24 years, son of Thiru.Sivaraman, 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

gpa

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



H.C.P.No.438 of 2023

To

WEB COPY

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



WEB COPY



H.C.P.No.438 of 2023

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

gpa

H.C.P.No.438 of 2023

24.07.2023