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H.C.P.No.434 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.434 of 2023

Sowmiya
W/o.Ajithkumar

.. Petitioner / Wife of Detenue

Vs.

1.State of Tamilnadu,
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 Prison,
Central Prison,
Salem.

4.The Inspector of Police,
Fairlands Police Station,
Chennai.

... Respondents

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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.5/Goonda/Salem City/2023 dated 25.01.2023 passed by the 2nd respondent under the Tamilnadu Act 14 of 1982 and set aside the same and direct the respondents to produce the petitioner's husband, Ajithkumar aged about 27 years S/o.Palanivel the detenu, now confined in Central Prison, Salem before this Hon'ble 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.]

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

2. When the captioned HCP was listed in the admission board on 23.03.2023, the following order was made by this Court.



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'Captioned Habeas Corpus Petition has been filed in this Court on 03.03.2023 inter alia assailing a detention order dated 25.01.2023 bearing reference C.M.P No.5/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. To be noted, wife 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 341, 294(b), 392, 397 and 506(ii) of 'Indian Penal Code, 1860 (Act 45 of 1860)' ['IPC' for brevity] in Crime No.833 of 2022 on the file of Fairlands 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 grounds of detention served on the detenu was not properly translated in Tamil, 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.'*

3. The aforementioned order / proceedings shall now be read as an integral part and parcel of this order. This means that the short forms, short references and abbreviations used in the earlier order dated 23.03.2023 will continue to be used in the instant order also.

4. 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.833 of 2022 on the file of Fairlands Police Station for the alleged offences under Sections 341, 294(b), 392, 397 and 506(ii) 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



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or be detained further by facts.

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5. 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.

6. When the captioned HCP was taken up for final hearing, both sides submitted that co-accused in the ground case was also clamped with similar preventive detention order. That was challenged in this Court by way of H.C.P.No.363 of 2023 and the same was allowed by this Court vide order dated 10.07.2023. Both sides further submitted that the point on which the preventive detention order clamped on the co-accused was set aside, is available for the detenu in the case on hand also.

7. Aforementioned order dated 10.07.2023 in H.C.P.No.363 of 2023 reads as follows:



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H.C.P.No.363 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.07.2023

CORAM

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

H.C.P.No.363 of 2023

Sneha

Vs

.. Petitioner

1. State of Tamil Nadu rep. By its
Secretary,
Home, Prohibition and Excise Department,
Fort St. George, Chennai -9.
2. The Commissioner of Police,
Salem City Police, Salem.
3. The Superintendent of Prison,
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 to call for the records relating to the detention order in C.M.P.No.6/Goonda/Salem City/2023 dated 25.01.2023 passed by the second respondent under the Tamil Nadu Act 14 of 1982 and set aside the same and direct the respondents to produce the petitioner's husband Manikandan @

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H.C.P.No.363 of 2023

Kullamani, 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 'Habeas Corpus Petition' (hereinafter 'HCP' for the sake of convenience and clarity) was listed in the Admission Board on 13.03.2023, 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 25.01.2023 bearing reference C.M.P.No.6/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.M.Subash, learned counsel on record for petitioner is before us. Learned counsel for petitioner submits that ground case qua the detenu is for alleged offences under Sections 341, 294(b), 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.833 of 2022 on the file of Fairlands 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

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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 there is non-application of mind on the part of detaining authority in arriving at the subjective satisfaction that there is a real possibility of detenu coming out on bail when there is no bail application filed by the detenu.

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

7. Mr.S.Raja Kumar, 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 13.03.2023 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. The ground case which constitutes substantial part of substratum of the impugned preventive detention order is Crime No.833 of 2022 on the file of Fairlands Police Station for the alleged offences under Sections 341, 294(b), 392, 397 and 506(ii) of IPC. Owing to the nature of the challenge to the

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impugned 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 aforementioned 13.03.2023 order (more particularly paragraph 5 thereat) at the time of admission, learned counsel projected the point that there is non-application of mind on the part of the detaining authority in arriving at subjective satisfaction that there is a real possibility of the detenu coming out on bail when there is no bail application filed by the detenu but in the final hearing today, learned counsel representing the counsel on record for petitioner projected his argument in his challenge against the impugned preventive detention order on the point that translated copies of the documents relied on by the detaining authority in a language which the detenu is conversant with, have not been furnished to the detenu. Elaborating on the submission, learned counsel drew our attention to page Nos.189 and 190 of the

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grounds booklet which are the Form of The Remand Warrant and remand extension order dated 19.01.2023 made by learned Judicial Magistrate IV, Salem. No Tamil translation of these documents have been furnished to the detenu. We had the benefit of perusing the grounds booklet. We also noticed that the said documents form part of the ground on which the impugned preventive 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 6th 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**

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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 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. '

8. In the case on hand, we find that the aforementioned documents which have been relied on as part of the grounds of detention qua impugned preventive detention order are crucial documents and not furnishing the same in Tamil the lone language known to the detenu has impaired his constitutional right to make an effective representation qua 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 preventive detention order dated 25.01.2023 bearing reference C.M.P.No.6/Goonda/Salem City/2023 made by the second respondent is set aside and the detenu Thiru.Manikandan @ Kullamani, aged 24

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years, Son of Thiru.Sivakumar, 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.)
10.07.2023

Index : Yes/No
Neutral Citation : Yes/No
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,
Fort St. George, Chennai -9.
2. The Commissioner of Police,
Salem City Police, Salem.
- 3.The Superintendent of Prison,
Central Prison, Salem.
- 4.The Inspector of Police,
Fairlands Police Station, Salem City.
- 5.The Public Prosecutor
High Court, Madras.



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8. As there is no dispute that the aforementioned point is available for the detenu in the case on hand also, captioned HCP also is allowed on the same point.

9. Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 25.01.2023 bearing reference C.M.P.No.5/Goonda/Salem City/2023 made by the second respondent is set aside and the detenu Thiru.Ajithkumar, aged 27 years, son of Thiru.Palanivel 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
Speaking order
Neutral Citation : Yes
rsi

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

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H.C.P.No.434 of 2023

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

rsi

To

- 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 Prison,
Central Prison,
Salem.
- 4.The Inspector of Police,
Fairlands Police Station,
Chennai.
- 5.The Public Prosecutor
Madras High Court, Chennai

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