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HCP No.570 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.09.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

H.C.P.No.570 of 2023

Shalini

W/o.Ajithkumar @ Karuppu Ajith

.. Petitioner

Vs.

1. The Secretary to the Government
Home Prohibition and Excise Dept.,
Secertariat, Chennai-600 009.
2. The Commissioner of Police
Salem City.
3. The Superintendent of Prison
Central Prison, Salem-7.
4. The Inspector of Police
Hasthampatty 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 connection with order of Detention passed by the second respondent dated 24.03.2023 in CMP.No.18/Goonda/Salem City/2023 against the Petitioner's Husband AjithKumar Alias Karuppu Ajith, Male aged 24 years S/o. Kumaran, who is



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confined at Central Prison, Salem and set aside the same and direct the respondents to produce the detenu before the Honble Court and set him at Liberty.

For Petitioner : Mr.D.Balaji
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' [hereinafter 'HCP' for the sake of brevity, convenience and clarity].

2. When the captioned HCP was listed before this Court 'For Admission' on 17.04.2023, the following proceedings / order was made:

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

(Order of the Court was made by M.SUNDAR, J.,)

Captioned Habeas Corpus Petition has been filed in this Court on 05.04.2023 inter alia assailing a detention order dated 24.03.2023 bearing reference C.M.P.No.18/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



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Sponsoring Authority.

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2. Wife of the detenu is the petitioner.

3. 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 'IPC' for the sake of convenience and clarity] in Crime No.52 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 the remand order in the grounds booklet furnished to the detenu was not properly translated in Tamil version 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



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respondents. List the captioned Habeas Corpus Petition accordingly.'

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3. The aforementioned Admission Board order captures all essentials that are imperative for appreciating this order and therefore we are not setting out the same again in this order. Suffice to say that aforementioned Admission Board order shall be read as an integral part and parcel of this order. Be that as it may, we are using the short forms, short references and abbreviations used in the Admission Board order in this order also for the sake of convenience and clarity. To be noted, 'detention order dated 24.03.2023 bearing reference C.M.P.No.18/Goonda/Salem City/2023 made by the Detaining Authority shall hereinafter be referred to as 'impugned preventive detention order' in this order for the sake of brevity, convenience and clarity.

4. Mr.D.Balaji, 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. Elaborating on paragraph No.5 of the Admission Board order, Mr.D.Balaji, learned counsel for HCP petitioner pivoted his campaign against the impugned preventive 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.108 of the booklet which is remand extension order dated 21.03.2023. No Tamil translation of the above document has been furnished to the detenu. We had the benefit of perusing the booklet. We also noticed that the remand extension order dated 21.03.2023 forms part of the ground on which the impugned preventive 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 the detenu is 4th standard and he is a school drop out. We are also informed that the detenu is conversant only with Tamil. Relevant portion of the confession is in Page No.92 of the grounds booklet and the same reads as follows:

'....நான் நான்காம் வகுப்பு வரை படித்துள்ளேன்....'



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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 the manner in which Hon'ble 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 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. We find that the aforementioned ***Powanammal*** case applies in all fours to the case on hand as we find that the remand extension order dated 21.03.2023 which has been relied on as part of the grounds of detention qua impugned preventive detention order is a crucial document and not



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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. 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 preventive detention order dated 24.03.2023 bearing reference C.M.P.No.18/Goonda/Salem City/2023 made by the second respondent is set aside and the detenu Thiru.Ajithkumar @ Karuppu Ajith, male, aged 24 years, son of Thiru.Kumaran, 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.)
12.09.2023

Index : Yes
Speaking
Neutral Citation : Yes
mk

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



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

mk

To

1. The Secretary to the Government
Home Prohibition and Excise Dept.,
Secertariat, Chennai-600 009.
2. The Commissioner of Police
Salem City.
3. The Superintendent of Prison
Central Prison, Salem-7.
4. The Inspector of Police
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Salem City.
5. The Public Prosecutor
High Court, Madras.

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