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H.C.P.No.619 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.07.2023

CORAM

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

H.C.P.No.619 of 2023

K.Gomathi

.. Petitioner

Vs

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

2. The Commissioner of Police,
Salem City
Sankari Main Road
Line Medu, Gugai
Salem – 636 005

3. The Inspector of Police
Kitchipalayam Police Station
Salem – 636 005

4. The Inspector of Police
Annathanapatti Police Station
Salem – 636 002

5. The Superintendent
Central Prison, Salem

.. 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 in connection with the order of detention passed by the second respondent dated 29.11.2022 in C.M.P.No.156/Goonda/Salem City/2022 against the petitioner's husband Pulsar Kumar @ Krishnakumar, son of Natarajan, aged about 31 years, who is confined in Central Prison, Salem and set aside the same and direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner : Mr.S.Jeyakumar

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 21.04.2023, this Court made the following order:

'Captioned Habeas Corpus Petition has been filed in this Court on 06.04.2023 inter alia assailing a detention order dated 29.11.2022 bearing reference C.M.P.No.156/Goonda/Salem City/2022 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 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.534 of 2022 on the file of Annadanapatty Police Station.

4. The aforementioned detention order has been made on



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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 Observation Mahazar in Crime No.320 of 2022 and arrest requisition letter in Crime No.222 of 2022 in the grounds of detention furnished to the detenu were illegible 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.E.Raj Thilak, 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 21.04.2023 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 two adverse cases and one ground case. The ground case which constitutes substantial part of substratum of the impugned preventive detention order is Crime No.534 of 2022 on the file of Annadanapatty Police Station for the 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]. Owing to the nature of the challenge to



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

4. Mr.S.Jeyakumar, learned 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 21.04.2023 Admission Board proceedings, at the time of admission, the point that Observation Mahazar in Crime No.320 of 2022 and arrest requisition letter in Crime No.222 of 2022 in the grounds of detention furnished to the detenu were illegible which prevented the detenu from making an effective representation was projected. Elaborating on the above submission, Mr.S.Jeyakumar, learned counsel for petitioner submitted that page Nos.15, 16, 30, 49 and 50 of the grounds booklet are completely not readable. As an illustration, learned counsel drew our attention to page No.30 which is as follows:



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6. To be noted, learned counsel pointed out that page No.30 is supposed to be observation mahazar which is a critical component of the substratum of the impugned preventive detention order.

7. The above mentioned point turns heavily on records and therefore learned Prosecutor really does not have much of a say.

8. We have no hesitation in persuading ourselves to say that detenu's sacrosanct constitutional right to make an effective representation against the impugned preventive detention order has been impaired owing to the aforementioned copies which are not readable at all. This means that there is infraction of constitutional safeguard ingrained in Article 22 (5) of the Constitution of India leading to the inevitable sequitur that impugned preventive detention order deserves to be dislodged.

9. Ergo, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 29.11.2022 bearing reference C.M.P. No.156/Goonda/Salem City/2022 made by the second respondent is set aside and the detenu Thiru.Krishnakumar @ Pulsarkumar, aged 31 years, son of Thiru.Nataraj, is directed to be set at liberty forthwith, if not required



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in connection with any other case / cases. There shall be no order as to costs.

(M.S.,J.)

(R.S.V.,J.)

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Index : Yes

Neutral Citation : Yes

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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
Government of Tamil Nadu
Fort St.George, Chennai – 600 009

2. The Commissioner of Police,
Salem City
Sankari Main Road
Salem – 636 005

3. The Inspector of Police
Kitchipalayam Police Station
Salem – 636 005

4. The Inspector of Police
Annathanapatti Police Station
Salem – 636 002

5. The Superintendent
Central Prison, Salem

6. The Public Prosecutor
High Court, Madras.

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

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