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H.C.P.No.869 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.09.2023

Coram

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

H.C.P.No.869 of 2023

Murukayi
W/o.Raja

.. Petitioner /Mother of detenu

VS

1.State Rep by
The Secretary to Government,
Home, Prohibition and Excise Department
Secretariat, Fort St. George,
Chennai – 600 009.

2.The Commissioner of Police,
Salem City.

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

4. The Inspector of Police,
Kitchipalayam 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
C.M.P.No.15/Goonda/Salem City/2023 dated 20.03.2023 on the file of the



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Commissioner of Police, Salem City, the second respondent herein and quash the same as illegal and direct the respondents to produce the detenu Thamizharasan @ Thamizh, S/o.Raja aged about 21 years, now confined at Central Prison, Salem before this Court and set him at liberty.

For Petitioner : Mr.R.Siranjeevi

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

ORDER

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

Captioned 'Habeas Corpus Petition' ['HCP' for the sake of brevity] has been filed by mother of the detenu assailing a 'preventive detention order dated 20.03.2023 bearing reference C.M.P.No.15/Goonda/Salem City/2023' [hereinafter 'impugned preventive detention order' for the sake of convenience and brevity] made by second respondent (hereinafter 'detaining authority' for the sake of convenience). To be noted, fourth respondent is the sponsoring authority.

2. Impugned preventive detention order has been made under 'The Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Cyber law



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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] on the premise that the detenu is a 'Goonda' within the meaning of Section 2(f) of Act 14 of 1982.

3. There is one adverse case and one ground case. The ground case which constitutes substantial part of substratum of the impugned preventive detention order is Crime No.354 of 2022 on the file of Kitchipalayam Police Station for alleged offences under Sections 341, 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 preventive detention order, it is not necessary to delve into the factual matrix or be detained further by facts.

4. Mr.R.Siranjeevi, learned counsel on record for petitioner and Mr.E.Raj Thilak, learned State Additional Public Prosecutor for all respondents are before us.

5. Though very many grounds have been raised in the support



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affidavit, Mr.R.Siranjeevi, learned counsel on record for petitioner at the hearing projected his argument qua challenge to the impugned preventive detention order on one point and that one point turns on not providing of translated copy of a document (relied on by the detaining authority) in a language which the detenu is conversant with. Elaborating on the above submission, learned counsel drew our attention to page Nos.97 and 98 of the booklet which is a Post-mortem Certificate in English. No Tamil translation of this document has been furnished to the detenu.

6. We had the benefit of perusing the booklet. We also noticed that Post-mortem certificate forms part of the ground on which the impugned 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.

7. Be that as it may, we are informed that the literacy level of the detenu is 8th standard in school and he is a school drop out. We are also informed that the detenu is conversant only with Tamil.

8. 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 a Hon'ble 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. '

9. We find that the aforementioned **Powanammal** case applies in all fours to the case on hand as we find that Post-mortem certificate 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 same in Tamil



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the lone language known to the detenu has impaired his constitutional right to make an effective representation of the impugned 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 20.03.2023 bearing reference C.M.P.No.15/Goonda/Salem City/2023 made by the second respondent is set aside and the detenu Thiru.Thamizharasan @ Thamizh, aged 21 years, son of Thiru.Raja 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.)
11.09.2023

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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and
R.SAKTHIVEL, J.,**

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