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H.C.P.No.1039 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.09.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

H.C.P.No.1039 of 2023

S.Priyadharshini

.. Petitioner

Vs

1. State of Tamil Nadu
Rep. by its Secretary to Government
Home, Prohibition and Excise Department
Fort St.George
Chennai – 600 009
2. The Commissioner of Police/Detaining Authority
Tiruppur District
Tiruppur City
3. The Superintendent of Prison
Central Prison, Coimbatore
4. The Inspector of Police
Tiruppur North Police Station
Tiruppur District

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Tiruppur

... Respondents

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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 the order of detention passed by the second respondent made in his order C.No.15/G/IS/Tiruppur City/2023 dated 05.04.2023 against the petitioner's son Naveen Kumar, son of Sekaran aged about 22 years who is confined at Central Prison, Coimbatore under Tamil Nadu Act 14 of 1982 as Goonda and to quash the same and direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner : Mr.P.Thinesh

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 for admission on 23.06.2023, this Court made the following order:

'Captioned Habeas Corpus Petition has been filed in this Court on 12.06.2023 inter alia assailing a detention order dated 05.04.2023 bearing reference C.No.15/G/IS/Tiruppur City/2023 made by 'second respondent' [hereinafter 'Detaining Authority']

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for the sake of convenience and clarity]. To be noted, fourth respondent is the Sponsoring Authority.

2. To be noted, mother of detenu is the petitioner.

3. Mr.P.Thinesh, learned counsel on record for petitioner is before us. Learned counsel for petitioner submits that ground case qua the detenu is for alleged offence under Section 174 of 'The Code of Criminal Procedure, 1973 (2 of 1974)' [hereinafter 'Cr.PC' for the sake of brevity and clarity] and subsequently, altered into Sections 302 read with 201 of 'Indian Penal Code, 1860 (Act 45 of 1860)' ['IPC' for the sake of brevity] in Crime No.284 of 2023 on the file of North Police Station, Tiruppur City.

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 some of the pages in the grounds booklet furnished to the detenu are illegible which prevented the detenu from making an effective representation.

6. Prima facie case made out for admission. Admit. Issue



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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.'

3. The aforementioned Admission Board order dated 23.06.2023 captures all essentials i.e., facts imperative for appreciating this final order. Therefore, we are not setting out the same again in this final order. The short forms, short references and abbreviations used in the Admission Board will continue to be used in this final order also for the sake of convenience and clarity.

4. '05.04.2023 order bearing reference C.No.15/G/IS/Tiruppur City/2023 made by the Detaining Authority' shall hereinafter be referred to as 'impugned preventive detention order' for the sake of brevity.

5. As would be evident from paragraph 5 of Admission Board orders, at the time of admission, learned counsel for petitioner posited his challenge to the impugned preventive detention order on the ground that certain pages in the grounds booklet are not legible i.e., not readable. Elaborating on this submission, learned counsel today drew our attention to page 99 of the



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grounds booklet served on the detenu. This page 99 of the grounds booklet served on the detenu is the Accident Register qua ground case.

6. We had the benefit of perusing the grounds booklet served on the detenu and we have no reason to disagree with the learned counsel for petitioner. Therefore, we sustain the submission of learned counsel that the rights of the detenu to make an effective representation qua impugned preventive detention order has been impaired. This Court has repeatedly held that such a right of the detenu is a constitutional safeguard ingrained in Article 22(5) of the Constitution and infraction of the same vitiates a preventive detention order and leaves it liable for being dislodged in a habeas drill. This is one such case.

7. In addition to the aforementioned point, we also find that the Tamil translation of the aforementioned Accident Register is incorrect as many portions of the Accident Register have not been translated. In this regard, we also find that literacy level of the detenu is only 9th Standard in school. As regards the Tamil translation, we respectfully remind ourselves of the **Powanammal** case i.e., **Powanammal Vs. State of Tamil Nadu** reported in **(1999) 2 SCC 413**. Relevant paragraphs in **Powanammal** case are

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Paragraphs 6 and 16, which 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. The incorrect translation also has caused infraction of detenu's right to make an effective representation and therefore, incorrect translation also contributes to the impairment of the detenu's right to make an effective representation, which is a constitutional safeguard ingrained in Article 22(5) of the Constitution.

9. Learned Prosecutor really does not have much of a say as both the aforementioned points turn heavily on records. As already alluded to supra,



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we had the benefit of perusing the grounds booklet served on the detenu.

This means that the impugned preventive detention order deserves to be dislodged in this habeas legal drill.

10. Ergo, the sequitur is captioned HCP is allowed. Impugned detention order dated 05.04.2023 bearing reference C.No.15/G/IS/Tiruppur City/2023 made by the second respondent is set aside and the detenu Thiru.Naveen Kumar, male, aged 22 years, son of Thiru.Sekaresan 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.)
20.09.2023

Index : Yes
Speaking order
Neutral Citation : Yes

gpa

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



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To
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5. The Public Prosecutor
Madras High Court
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