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H.C.P.No.1382 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.02.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

and

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

H.C.P.No.1382 of 2022

Sinega

W/o.Ramu

.. Petitioner

Vs.

1. The State of Tamil Nadu
Rep. by its Secretary to Government (Home)
Prohibition and Excise Department
Secretariat, Fort St.George
Chennai-600 009.
2. The District Collector and District Magistrate
O/o.District Collector and District Magistrate
Kallakurichi District
Kallakurichi.
3. The Superintendent
Central Prison
Cuddalore District.
4. The Superintendent of Police
O/o. Superintendent of Police
Kallakurichi District
Kallakurichi.

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5. The Inspector of Police
Kallakurichi Police Circle
Kallakurichi District.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus to call for the entire records relating to the impugned order of detention passed by the second respondent in D.O.No.C2/31/2022 dated 28.06.2022 and set aside the same and consequently, direct the respondents to produce the detenu Ramu, son of Rajendran, aged about 26 years, petitioner's husband now confined at Central Prison, Cuddalore before this Hon'ble Court and set him at liberty forthwith.

For Petitioner	:	Mr.S.Saravanakumar
For Respondents	:	Mr.R.Muniyapparaj Additional Public Prosecutor

ORDER

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

Captioned 'Habeas Corpus Petition' [hereinafter 'HCP' for the sake of convenience and clarity] has been filed in this Court on 13.07.2022 by spouse of detenu, assailing a 'detention order dated 28.06.2022 bearing reference D.O.No.C2/31/2022' [hereinafter 'impugned detention order' for the sake of convenience and clarity] made by 'second respondent i.e., jurisdictional District Collector' [hereinafter 'Detaining Authority' for the



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sake of convenience and clarity]. To be noted, fifth respondent i.e.,

jurisdictional Inspector of Police is the Sponsoring Authority.

2. Mr.S.Saravanakumar, learned counsel on record for petitioner and Mr.R.Muniyapparaj, learned Additional Public Prosecutor for all the five respondents are before us.

3. Suffice to say that the impugned detention order has been made by the Detaining Authority *inter alia* on the premise that the detenu is a 'Goonda' within the meaning of 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].

4. The ground case is Crime No.53 of 2022 for alleged offences under Sections 147, 148, 294(b), 427, 449, 341 and 302 of 'The Indian Penal



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Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity]

on the file of the fifth respondent, who is the Sponsoring Authority. There is no adverse case and only one solitary ground case against the detenu. In the light of the trajectory the matter took in the hearing, it may not be necessary to delve further on facts.

5. Learned counsel on record for petitioner has placed before us grounds of detention which has been served on the detenu through the prison authorities in the form of a booklet. These grounds of detention shall hereinafter be referred to as 'booklet' for the sake of convenience and clarity. To be noted, the booklet as served on the detenu has been placed before us and learned Additional Public Prosecutor also had the benefit of perusing the same. We notice that no counter affidavit has been filed by State in the case on hand. We also noticed that the date of remand is 27.05.2022 and impugned detention order was made on 28.06.2022.

6. As regards the petitioner's campaign against the impugned detention order, learned counsel for petitioner, adverting to the booklet and



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more particularly, pages 90, 92, 94 and 96 thereof submits that the remand order, bail application, order in bail application being order dated 15.06.2022 in C.M.P.No.4094 of 2022 on the file of Principal Sessions Court, Villupuram and an order in what according to Detaining Authority is a similar case are all in English and a Tamil translation of the same has not been furnished to the detenu. Learned counsel for petitioner submits that the literacy level of the detenu is not very high (we are informed that he has studied upto class 10 in school). Learned counsel for petitioner draws our attention to ground (i) of the support affidavit and the same reads as follows:

'i. It is submitted that the Detaining Authority failed to consider that the non-supply of particulars in a language known to the detenu its amount to violations of safeguard gravened under Article 22(5) of the Constitution of India and that the impugned order is liable to be set aside.'

7. A careful perusal of the booklet brings to light that the aforementioned documents in aforementioned page numbers in the booklet are in English and Tamil translation of the same have not been furnished to the detenu. This means that there is infraction of Constitutional guarantee ingrained in sub-clause (5) of Article 22 of Constitution of India. Owing to



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infracton of the Constitutional guarantee ingrained in sub-clause (5) of Article 22 of Constitution of India, we have no difficulty in persuading ourselves to interfere qua the impugned detention order as right to make effective representation qua a preventive detention order is a sanctus Constitutional right. To put it differently, considering the nature of the documents for which Tamil translation has not been provided, we are convinced that the right of the detenu to make an effective representation has been hampered and this is the constitutional guarantee qua Article 22(5) of Constitution of India.

8. Before concluding, we also remind ourselves that preventive detention is not a punishment and HCP is a high prerogative writ.

9. Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 28.06.2022 bearing reference D.O.No.C2/31/2022 made by the second respondent is set aside and the detenu Thiru.Ramu, son of Mr.Rajendran is directed to be set at liberty forthwith, if not required in connection with any other case / cases.



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10. Captioned HCP ordered on above terms. There shall be no order

as to costs.

(M.S.,J.)

(M.N.K.,J.)

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Index : Yes / No

Speaking / Non-speaking

Neutral Citation : Yes / No

mk

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

To

1. The State of Tamil Nadu
Rep. by its Secretary to Government (Home)
Prohibition and Excise Department
Secretariat, Fort St.George, Chennai-600 009.
2. The District Collector and District Magistrate
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5. The Inspector of Police
Kallakurichi Police Circle
Kallakurichi District.
6. The Public Prosecutor
High Court, Madras.

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and
M.NIRMAL KUMAR, J.,

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