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H.C.P.No.1079 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.09.2023

CORAM

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

H.C.P.No.1079 of 2023

Indra

.. Petitioner

Vs

- 1.The Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George, Chennai – 9.
- 2.The District Magistrate and District Collector,
Tiruppur, Tiruppur District.
- 3.The Superintendent of Police,
Tiruppur District.
- 4.The Superintendent of Prison,
Coimbatore Central Prison,
Coimbatore.
- 5.The Inspector of Police,
Cheyur Police Station,
Tiruppur 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 records in connection with the order of detention passed by the 2nd respondent in Cr.M.P.No.12/Goonda/2023 dated 28.03.2023 against

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the petitioner's husband Manikandan, S/o.Nagaraj @ Nataraj, aged about 43 years, who is confined at Central Prison, Coimbatore, set aside the same and direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner : No appearance
For Respondents : Mr.E.Raj Thilak
Additional Public Prosecutor
assisted by Mr.C.Aravind

ORDER

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

This order will now dispose of captioned 'Habeas Corpus Petition' ['HCP' for the sake of brevity, convenience and clarity].

2. When the captioned HCP was listed for Admission on 23.06.2023, the following proceedings/order was made:

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M.SUNDAR, J.,

and

R.SAKTHIVEL, J.,

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

Captioned Habeas Corpus Petition has been filed in this Court on 16.06.2023 inter alia assailing a detention order dated 28.03.2023 bearing reference Cr.M.P.No.I2/GOONDA/2023 made



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by 'second respondent' [hereinafter 'Detaining Authority' for the sake of convenience and clarity]. To be noted, fifth respondent is the Sponsoring Authority.

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

3. Mr.Nagendra Prasath, 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 394 of 'Indian Penal Code, 1860 (Act 45 of 1860)' ['IPC' for the sake of brevity] in Crime No.27 of 2023 on the file of Cheyur 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, Sandoffenders, 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 proper Tamil translation of remand report has not been furnished to the detenu 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.'

3. The aforementioned proceedings/order dated 23.06.2023 captures all essentials i.e., essential facts imperative for appreciating this final order and therefore we are not setting out the facts again. Suffice to say that the aforementioned Admission Board order dated 23.06.2023 shall now be read as an integral part and parcel of the



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instant final order. This also means that the short forms, short references and abbreviations used in the aforementioned Admission Board order will continue to be used in the instant final order also.

4. Before we proceed further, we make it clear that 'detention order dated 28.03.2023 bearing reference Cr.M.P.No.12/GOONDA/2023 made by the detaining authority' shall hereinafter be referred to as the 'impugned preventive detention order' for the sake of convenience and clarity.

5. There is no representation for the petitioner. Mr.E.Raj Thilak, learned Additional Public Prosecutor assisted by Mr.C.Aravind, learned counsel for all the respondents is before us.

6. As would be evident from paragraph 5 of the Admission Board order, at the time of admission, learned counsel for petitioner predicated his challenge to the impugned preventive detention order on the point that Tamil translation of remand report has not been furnished to the detenu.



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7. We had the benefit of perusing the booklet. We also noticed that Page No.30 contains 'Calender and Judgment showing conviction in the second adverse case' and Tamil translation of the same has not been furnished to the detenu. The said document forms part of the grounds on which the impugned preventive detention order has been made. As this turns on obtaining scenario which comes to light from the grounds booklet which is before us, learned Prosecutor really does not have much of a say.

8. Be that as it may, we are informed that the literacy level of the detenu is low. We are also informed that the detenu is conversant only with Tamil. We remind ourselves of **Powanammal** case i.e., **Powanammal Vs. State of Tamil Nadu**, wherein Hon'ble Supreme Court addressed to itself this translation point in a similar fact situation. The question which the Hon'ble Supreme Court addressed to itself is captured in paragraph 6 and the manner in which Hon'ble Supreme Court answered this question has been captured in paragraph 16. To be noted, **Powanammal** case is reported in **(1999) 2 SCC 413** and paragraphs 6 and 16 {as in SCC

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journal} read as follows:

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'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. '

9. We find that the aforementioned **Powanammal** case applies in all fours to the case on hand as we find that the Calender and Judgment showing conviction in the second adverse case 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 the lone language known to the detenu has impaired his constitutional right to make an effective representation qua impugned preventive detention order. We therefore have no hesitation in saying that the impugned preventive detention order



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deserves to be dislodged.

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

11. Ergo, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 28.03.2023 bearing reference Cr.M.P.No.12/Goonda/2023 made by the second respondent is set aside and the detenu Thiru.Manikandan, aged 43 years, son of Thiru.Late. Nagaraj alias Nataraj, 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.)
27.09.2023

Index : Yes/No
Neutral Citation : Yes/No
mmi

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

To

1.The Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George, Chennai – 9.

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2.The District Magistrate and District Collector,
Tiruppur, Tiruppur District.

3.The Superintendent of Police,
Tiruppur District.

4.The Superintendent of Prison,
Coimbatore Central Prison, Coimbatore.

5.The Inspector of Police,
Cheyur Police Station,
Tiruppur District.

6.The Public Prosecutor,
High Court, Madras.



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and
R.SAKTHIVEL, J.,**

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