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H.C.P.No.1613 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.03.2023

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THE HONOURABLE MR.JUSTICE **M.SUNDAR**
and
THE HONOURABLE MR.JUSTICE **M.NIRMAL KUMAR**

H.C.P.No.1613 of 2022

Sara

.. Petitioner

Vs

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

2.The Commissioner of Police/Detaining Authority,
Huzur Road, Coimbatore City,
Coimbatore – 18.

3.The Superintendent of Police,
Central Prison – Coimbatore,
Coimbatore District.

4.State Rep. By its
The Inspector of Police,
B-2 R.S.Puram Police Station,
Coimbatore 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 petitioner's son detention under Tamil Nadu Act 14 of 1982 vide detention order, dated 06.08.2022 on the file of the second respondent herein made in proceedings Memo

Page Nos.1/8



H.C.P.No.1613 of 2022

C.No.50/G/IS/2022, quash the same as illegal and consequently direct the respondents herein to produce the petitioner's son namely N.Kathirvel @ Singa, S/o.Nagaraj, aged 32 years, before this Court and set the petitioner's son at liberty from detention, now the petitioner's son detained at Central Prison, Coimbatore.

For Petitioner : Mr.W.Camyles Gandhi
For Respondents : Mr.R.Muniyapparaj
Additional Public Prosecutor
assisted by Mr.M.Sylvester John

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 detenu assailing a 'preventive detention order dated 06.08.2022 bearing reference C.No.50/G/IS/2022' [hereinafter 'impugned detention order' for the sake of convenience and brevity]. To be noted, fourth respondent is the sponsoring authority and second respondent is the detaining authority as impugned detention order has been made by second respondent.

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



H.C.P.No.1613 of 2022

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 are three adverse cases. The ground case which is the sole substratum of the impugned detention order is Crime No.315 of 2022 on the file of B-2 R.S.Puram Police Station for alleged offences under Sections 294(b), 307 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 detention order, it is not necessary to delve into the factual matrix or be detained further by facts.

4. Mr.W.Camyles Gandhi, learned counsel for petitioner and Mr.R.Muniyapparaj, learned State Additional Public Prosecutor assisted by Mr.M.Sylvester John, learned counsel, for all respondents are before us.



H.C.P.No.1613 of 2022

5. Though several grounds have been raised in the support affidavit, Mr.W.Camyles Gandhi, learned counsel for petitioner in the arguments at the time of hearing pivoted his campaign against the impugned detention order on one point and that one point turns on incorrect/improper translation. Learned counsel adverting to pages 212 and 213 of the booklet submits that the remand order dated 20.07.2022 has not been correctly translated while the remand order in English by the learned Magistrate says it is 15 days from 20.07.2022, Tamil translation says it is 15 days from 20.02.2021. 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.

6. In this regard, we are informed that the literacy level of the detenu is only 7th standard in school and that he is a school drop out. We remind ourselves of Powanammal case i.e., **Powanammal Vs. State of Tamil Nadu**. Honourable 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 Honourable Bench of the



H.C.P.No.1613 of 2022

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 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. '

7. In the case on hand, we find that remand order which has been relied on as part of the grounds of detention qua impugned detention order is a crucial document and not furnishing the correct translation of the same in Tamil the lone language known to the detenu has impaired his constitutional right to make an effective representation qua the impugned detention order. We therefore have no hesitation in saying that the impugned detention order deserves to be dislodged.



H.C.P.No.1613 of 2022

WEB COPY

8. Apropos, the sequitur is, captioned HCP is allowed. Impugned detention order dated 06.08.2022 bearing reference C.No.50/G/IS/2022 made by the second respondent is set aside and the detenu Thiru.N.Kathirvel @ Singa, male, aged 32 years, son of Thiru.Nagaraj 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.) (M.N.K.,J.)
15.03.2023

Index : Yes / No
Neutral Citation : Yes / No
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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,
Secretariat, Fort St. George, Chennai - 9.
- 2.The Commissioner of Police/Detaining Authority,
Huzur Road, Coimbatore City,
Coimbatore - 18.
- 3.The Superintendent of Police,

Page Nos.6/8



H.C.P.No.1613 of 2022

Central Prison – Coimbatore,
Coimbatore District.

4.The Inspector of Police,
B-2 R.S.Puram Police Station,
Coimbatore District.

5.The Public Prosecutor,
High Court, Madras.



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H.C.P.No.1613 of 2022

**M.SUNDAR, J.,
and
M.NIRMAL KUMAR, J.,**

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H.C.P.No.1613 of 2022

15.03.2023

Page Nos.8/8