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HCP No.1657 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.03.2023

Coram

The Hon'ble Mr. Justice **M.SUNDAR**
and
The Hon'ble Mr. Justice **M.NIRMAL KUMAR**

H.C.P. No.1657 of 2022

K.Nithya

.. Petitioner

Vs.

1.The State of Tamil Nadu,
Rep. by Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George, Chennai - 600 009.

2.The Commissioner of Police,
Salem District.

3.The Inspector of Police,
Ammamet Police Station,
Salem District.

4.The Superintendent,
Central Prison, Salem.

... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus calling for the records relating to the detention order passed by the second respondent on 26.07.2022 in



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C.M.P.No.79/Goonda/Salem City/2022 and to quash the same and direct the respondents to produce the body of the detenu, Balamurugan, S/o.Gopal, aged about 45 years before this Court and set him at liberty, now detained at Central Prison, Salem.

For Petitioner : Mr.C.Iyyapparaj
For Respondents : Mr.R.Muniyapparaj
Additional Public Prosecutor
Assisted by Mr.M.Sylvester John

ORDER

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

Captioned 'Habeas Corpus Petition' [hereinafter 'HCP' for the sake of convenience and brevity] has been filed by the wife of the detenu assailing 'detention order dated 26.072022 bearing reference C.M.P.No.79/Goonda/Salem City/2022' [hereinafter 'impugned detention order' for the sake of convenience] made by the 'second respondent' [hereinafter 'detaining authority' for the sake of convenience and clarity]. To be noted, third respondent is the sponsoring authority.

2.Impugned detention order has been made under 'The Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Cyber law offenders, Drug-offenders, Forest-offenders, Goondas, Immoral traffic offenders,



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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 and one ground case. The ground case which is the substratum of the impugned detention order is Crime No.355 of 2022 on the file of Ammapet Police Station for alleged offences under Sections 294(b), 323, 307 and 420 '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.C.Iyyapparaj, learned counsel for petitioner and Mr.R.Muniyapparaj, learned Additional Public Prosecutor assisted by Mr.M.Sylvester John learned counsel for respondents are before us.

5. Notwithstanding very many averments in the support affidavit qua



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captioned HCP, learned counsel for petitioner submits that the English version of Arrest Intimation Form in the ground case is given at Page No.82 of the grounds of detention served on the detenu in the form of a booklet. The literacy level of the detenu is not very high and the detenu is conversant only with Tamil is the undisputed obtaining position. Tamil translation of the arrest intimation form dated 28.06.2022 has not been provided. To be noted, we had the benefit of perusing the booklet and we find that the contention is correct. This certainly hampers the right of the detenu in making an effective representation. Right of detenu to make an effective representation qua preventive detention is a constitutional safeguard ingrained in Clause (5) of Article 22 of the Constitution of India. We have no difficulty in coming to the conclusion that there is an infraction of this constitutional safeguard and therefore, the impugned detention order is liable to be dislodged.

6.Apropos, the sequitur is, captioned HCP is allowed and the detention order dated 26.07.2022 bearing reference C.M.P.No.79/Goonda/Salem City/2022 made by the second respondent is



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set aside and the detenu Thiru.Balamurugan, aged 45 years, son of

Thiru.Gopal is directed to be set at liberty forthwith unless required in

connection with any other case. There shall be no order as to costs.

(M.S,J.) (M.N.K.,J.)

08.03.2023

Index:Yes/No

Neutral Citation : Yes/No

cse

Note: Registry to forthwith communicate this order to Jail authorities in Central Prison, Salem.

To

- 1.The Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George, Chennai - 600 009.
- 2.The Commissioner of Police,
Salem District.
- 3.The Inspector of Police,
Ammamet Police Station, Salem District.
- 4.The Superintendent,
Central Prison, Salem.
- 5.The Public Prosecutor,
High Court of Madras,
Chennai - 104.



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

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