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H.C.P.No.1666 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.03.2023

CORAM

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

H.C.P.No.1666 of 2022

Masthan Bee

.. Petitioner

Vs

- 1.The State of Tamil Nadu,
Rep. by its Additional Chief Secretary to Government,
Department of Prohibition and Excise (Home),
Fort St. George, Chennai 600009.
- 2.The Commissioner of Police,
Chennai City Police, Greater Chennai,
Commissioner Office, Vepery,
Chennai 600007.
- 3.The Inspector of Police,
J-7, Velachery Police Station,
Chennai.
- 4.The Superintendent of Prison,
Central Prison-II,
Puzhal, Chennai.

.. 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 Memo No.220/BCDFGISSSV/2022 dated 27.07.2022 on the file of second respondent herein and set aside the same as illegal and



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produce the detenu Hakkim, Son of Masthan, aged about 23 years, who is Confined at Central Prison, Puzhal, Chennai before this Court and set him at liberty.

For Petitioner : Mr.S.Senthilvel
for Mr.Ilayaraja Kandasamy

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 27.07.2022 bearing reference Memo No.220/BCDFGISSSV/2022' [hereinafter 'impugned detention order' for the sake of convenience and brevity]. To be noted, third 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



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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 four adverse cases. The ground case which is the sole substratum of the impugned detention order is Crime No.337 of 2022 on the file of J7 Velacherry Police Station for alleged offences under Sections 341, 294(b), 336, 427, 392, 397 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.S.Senthilvel, learned counsel representing counsel on record 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.



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5. Though very many grounds have been raised in the support affidavit, learned counsel for petitioner at the hearing projected his argument qua challenge to the impugned detention order on one point and that point is not providing correct translated copy of a document (relied on by the detaining authority) in a language which the detenu is conversant with. The remand order made in English by a learned Magistrate says that four accused (A1 to A4) were produced before him at his residence at 9.50 p.m. in the night. However, the Tamil translation gives an impression that the accused were produced in the evening. We had the benefit of perusing the aforementioned remand order at page 485 and translation of the same in Tamil in page 489 of the booklet. 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. Be that as it may we are informed that the literacy level of the detenu is 9th standard in school and he is a school drop out. We are also informed that the detenu is conversant only with Tamil. We remind ourselves of Powanammal case i.e., **Powanammal Vs. State of**



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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 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 detainee, 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 detainee 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



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representation qua the impugned detention order. We therefore have no hesitation in saying that the impugned detention order deserves to be dislodged.

8. Apropos, the sequitur is, captioned HCP is allowed. Impugned detention order dated 27.07.2022 bearing reference Memo No.220/BCDFGISSSV/2022 made by the second respondent is set aside and the detenu Thiru.Hakkim, male, aged 23 years, son of Thiru.Masthan 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, Puzhal, Chennai.

To

1.The Additional Chief Secretary to Government,
Department of Prohibition and Excise (Home),
Fort St. George, Chennai 600009.

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2.The Commissioner of Police,
Chennai City Police, Greater Chennai,
Commissioner Office, Vepery,
Chennai 600007.

3.The Inspector of Police,
J-7, Velachery Police Station,
Chennai.

4.The Superintendent of Prison,
Central Prison-II,
Puzhal, Chennai.

5.The Public Prosecutor,
High Court, Madras.



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