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H.C.P.No.1688 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.03.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

and

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

H.C.P.No.1688 of 2022

Girijamery
W/o.Vijayan

... Petitioner/Mother of Detenu

Vs.

1.The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Fort St. George,
Chennai - 600 009.

2.The Commissioner of Police,
Greater Chennai,
Office of the Commissioner of Police (Goondas Section),
Vepery, Chennai – 600 007.

3.The Superintendent of Prison,
Central Prison Puzhal,
Chennai-600 066.

4.State rep. by its,
The Inspector of Police,
R-2, Kodambakkam Police Station,
Chennai.

.. Respondents



H.C.P.No.1688 of 2022

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 30.07.2022 on the file of the second respondent herein made in proceedings Memo in BCDFGISSSV No.225/2022, quash the same as illegal and consequently direct the respondents herein to produce the petitioner's son namely Rishi @ Rishikesh, S/o.Vijayan, aged 23 years before this Hon'ble Court and set the petitioner's son at liberty from detention, now the petitioner's son detained at Central Prison, Puzhal, Chennai.

For Petitioner : Mr.W.Camyles Gandhi

For Respondents : Mr.E.Raj Thilak
Additional Public Prosecutor

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 30.07.2022 bearing reference BCDFGISSSV No.225/2022' [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



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has been made by second respondent.
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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, 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 five adverse cases and one ground case. The ground case which is the substratum of the impugned detention order is Crime No.137 of 2022 on the file of R-2 Kodambakkam Police Station for alleged offences under Sections 341, 294(b), 324, 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.



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4. Mr.W.Camyles Gandhi, learned counsel for petitioner and Mr.E.Raj Thilak, learned State Additional Public Prosecutor for all four respondents are before us.

5. Notwithstanding very many averments and grounds raised in the support affidavit, Mr.W.Camyles Gandhi, learned counsel for petitioner projects his argument or in other words predicates his campaign against the impugned detention order on one point and that one point turns on improper / incorrect translation owing to complete omission of a portion of the remand order. Learned counsel drew our attention to pages 114 and 116 of grounds of detention supplied to the detenu in the form of a booklet [hereinafter 'said booklet' for the sake of convenience and clarity].

6. Page 114 is a remand order dated 11.07.2022 made by the jurisdictional Metropolitan Magistrate. This remand order clearly reads that A1 to A3 complained of physical assault by the police and they have also complained that false case has been foisted against them by the police. The relevant line in the remand order (as made in English by the learned jurisdictional Magistrate) reads as follows:



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*'A1 to A3 complained of physical assault and false case
against the police'*

The aforementioned entire sentence is missing in the tamil translation.

7. We are informed (without any disputation or contestation) that the literacy level of the detenu is only that of Class 10 in school, that he is a school drop out and that he is conversant only with Tamil. Therefore, we have no difficulty in accepting the further submission of learned counsel for petitioner that this lapse in translation has impaired the constitutional safeguard of making effective representation vested in the detenu *inter alia* by clause (5) of Article 22 of the Constitution of India. This means that the impugned detention order deserves to be dislodged, the further reason being on facts and circumstances of the case on hand remand order is a critical document and impugned detention order has relied on the same.

8. Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 30.07.2022 bearing reference BCDFGISSSV



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No.225/2022 made by the second respondent is set aside and the detenu Thiru.Rishi @ Rishikesh, aged 23 years, son of Thiru.Vijayan, now detained in Central Prison, Puzhal, Chennai is directed to be set at liberty forthwith unless required in connection with any other case/s.

(M.S.,J.) (M.N.K.,J.)
13.03.2023

Index : Yes / No
Speaking / Non-speaking
Neutral Citation : Yes / No
rsi

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

To

- 1.The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Fort St. George,
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- 2.The Commissioner of Police,
Greater Chennai,
Office of the Commissioner of Police (Goondas Section),
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4.The Inspector of Police,
R-2, Kodambakkam Police Station,
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5.The Public Prosecutor
High Court, Madras.



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

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