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H.C.P.No.1493 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.09.2023

CORAM

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

H.C.P.No.1493 of 2023

G.Premkumar

.. Petitioner

Vs

- 1.The Additional Chief Secretary,
Government of Tamil Nadu,
Home, Prohibition and Excise Department,
Secretariat, Chennai – 9.
- 2.The Commissioner of Police,
Salem City, Salem.
- 3.The Superintendent of Prison,
Central Prison, Salem.
- 4.State rep. By
Inspector of Police,
Annadanapatty Police Station,
Salem City.

.. 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
relating to the detention order passed by the second respondent in
proceedings namely C.M.P. No.160/Goonda/Salem City/2022 dated

Page Nos.1/9



H.C.P.No.1493 of 2023

15.12.2022 and to set aside the same and direct the fourth respondent to produce the petitioner's brother viz., Thiru.Jayakumar, aged 45 years, son of Gopalakrishnan, residing at 6/311, Madura Kaliyamman Kovil Street, Shanmuga Nagar, Dadagapatty, Salem, who is presently undergoing detention in the Central Prison, Salem as Goonda under Section 2(f) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982) before this Court and thereby setting him at liberty forthwith.

For Petitioner : Mr.R.Muthu Ramananand
For Respondents : Mr.E.Raj Thilak
Additional Public Prosecutor

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 08.08.2023, the following proceedings/order was made:

Page Nos.2/9



H.C.P.No.1493 of 2023

'H.C.P.No.1493 of 2023

WEB COPY

**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 31.07.2023 inter alia assailing a 'detention order dated 15.12.2022 bearing reference C.M.P. No.160/Goonda/Salem City/2022' (hereinafter 'impugned preventive detention order' for the sake of convenience and clarity) made by 'second respondent' [hereinafter 'Detaining Authority' for the sake of convenience and clarity]. To be noted, fourth respondent is the Sponsoring Authority.

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

3. Mr.R.Muthu Ramananand, learned counsel on record for petitioner submits that ground case qua the detenu is for alleged offences under Sections 341, 392 r/w 397, 506(ii) of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] in Crime No.565 of 2023 on the file of Annadanapatty Police Station.

4. The aforementioned impugned preventive 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, 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].

5. The impugned preventive detention order has been assailed inter alia on the ground that some of the pages in the grounds booklet furnished to the detenu are illegible.

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. '



H.C.P.No.1493 of 2023

3. The aforementioned proceedings/order dated 08.08.2023 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 08.08.2023 shall now be read as an integral part and parcel of the 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. Mr.R.Muthu Ramananand, learned counsel representing the counsel on record for petitioner and Mr.E.Raj Thilak, learned Additional Public Prosecutor for all the respondents are before us.

5. 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 some of the pages in the grounds booklet furnished to the detenu are illegible, but, in the Final Hearing Board today, learned counsel changed his line of attack and submitted that translated copies of the documents relied on by the detaining authority



H.C.P.No.1493 of 2023

in a language which the detenu is conversant with, have not been furnished to the detenu.

6. Elaborating on the above submission, learned counsel for petitioner drew our attention to page Nos.89 and 90 of the grounds booklet which contain the arrest intimation (கைது குறிப்பாணை) in the ground case and Tamil translation of the said document has not been furnished to the detenu.

7. We had the benefit of perusing the booklet. We also noticed that several columns in the arrest intimation in the ground case have been filled in English and arrest intimation 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 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 and he is working as a loadman. We are also informed that the detenu is conversant only with Tamil. We remind



H.C.P.No.1493 of 2023

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 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. '

9. We find that the aforementioned **Powanammal** case applies in all fours to the case on hand as we find that arrest intimation in the ground 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



H.C.P.No.1493 of 2023

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 deserves to be dislodged.

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

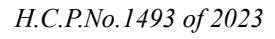
11. Ergo, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 15.12.2022 bearing reference C.M.P.No.160/Goonda/Salem City/2022 made by the second respondent is set aside and the detenu Thiru.Jayakumar, aged 45 years, Son of Thiru.Gopalakrishnan, is directed to be set 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.)
15.09.2023

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, Salem.

Page Nos.7/9



- 1.The Additional Chief Secretary,
Government of Tamil Nadu,
Home, Prohibition and Excise Department,
Secretariat, Chennai – 9.
- 2.The Commissioner of Police,
Salem City, Salem.
- 3.The Superintendent of Prison,
Central Prison, Salem.
- 4.The Inspector of Police,
Annadanapatty Police Station,
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- 5.The Public Prosecutor,
High Court, Madras.



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H.C.P.No.1493 of 2023

**M.SUNDAR, J.,
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mmi

H.C.P.No.1493 of 2023

15.09.2023

Page Nos.9/9