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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.03.2023

CORAM

THE HONOURABLE MR.JUSTICE **M.SUNDAR**
and
THE HONOURABLE MR.JUSTICE **N.ANAND VENKATESH**

H.C.P.No.1818 of 2022

Kamsala
Wife of Arulselvam .. Petitioner /
Wife of Detenu

Vs

1. The State of Tamil Nadu
   rep. By its
   Additional Chief Secretary to Government
   Home, Prohibition and Excise Department
   Fort St. George
   Chennai – 600 009

2. The District Collector and District Magistrate
   Kallakurichi District
   Kallakurichi

3. The Superintendent of Prison
   Central Prison
   Cuddalore

4. The Superintendent of Police
   Kallakurichi District

5. The Inspector of Police
   Kachirayapalayam Police Station
   Kallakurichi District .. Respondents

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Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus to call for the records pertaining to the detention order passed by the 2nd respondent in D.O.No.C2/37/2022 dated 15.08.2022 and set aside the same and direct the respondents to produce the petitioner's husband namely Arulselvam, son of Arunachalam, aged about 29 years, who is now confined at Central Prison at Cuddalore, before this Court and set him at liberty.

For Petitioner	:	Mr.R.Sankarasubbu for Mr.M.Vijayaragavan
For Respondents	:	Mr.R.Muniyapparaj Additional Public Prosecutor Assisted by Mr.N.Narkeeran, Advocate

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 wife of detenu assailing a 'preventive detention order dated 15.08.2022 bearing reference D.O.No.C2/37/2022 [hereinafter 'impugned detention order' for the sake of convenience and brevity]. To be noted, fifth respondent is the sponsoring authority and second respondent is the detaining authority as impugned detention order 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 is no adverse case. The ground case which is the sole substratum of the impugned detention order is Crime No.201 of 2022 on the file of Kachirayapalayam Police Station, for alleged offences under Boy Missing, altered to Section 364(A), 344, 120(B) 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.R.Sankarasubbu, learned counsel representing the counsel on record for petitioner and Mr.R.Muniyapparaj, learned State Additional Public Prosecutor assisted by Mr.N.Narkeeran for all respondents are before us.

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 translated copy of a document (relied on by the detaining authority) in a language which the detenu is conversant with. Elaborating on the submission, learned counsel drew our attention to page 81 of the booklet which is the Remand Order. No Tamil translation of this Remand Order has been furnished to the detenu. We had the benefit of perusing the booklet. We also noticed that Remand Order forms part of the ground on which the impugned detention order has been made. 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.

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6. Be that as it may, we are informed that the literacy level of the detenu is 8th 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 Tamil Nadu**, wherein Hon'ble 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 Hon'ble 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 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

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been relied on as part of the grounds of detention qua impugned detention order is a crucial document and not furnishing 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.

8. Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 15.08.2022 bearing reference D.O.No.C2/37/2022 made by the second respondent is set aside and the detenu Thiru.Arulselvam, male aged 29 years, son of Thiru.Arunachalm, 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.) **(N.A.V.,J.)**
20.03.2023

Index : Yes
Neutral Citation : Yes
gpa

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

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To

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   Home, Prohibition and Excise Department
   Fort St. George
   Chennai – 600 009

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5. The Inspector of Police
   Kachirayapalayam Police Station
   Kallakurichi District

6. The Public Prosecutor
   Madras High Court
   Chennai

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