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H.C.P.No.1820 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.03.2023

CORAM

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

H.C.P.No.1820 of 2022

R.Lakshmi
Wife of Raj Gounder

.. Petitioner /
Mother of Detenu

Vs

1. The Additional Chief Secretary to Government
Home, Prohibition and Excise Department
Government of Tamil Nadu
Fort St. George
Chennai – 600 009
2. The District Collector and District Magistrate
Detaining Authority
Kallakurichi District
Kallakurichi
3. The Superintendent of Prison
Kallakurichi District
Kallakurichi
4. The Inspector of Police
Law and Order
Kachirayapalayam Police Station
Kallakurichi District
5. The Superintendent
Central Prison
Cuddalore

.. 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 set aside the order dated 15.08.2022 passed in D.O.No.C2/40/2022 on the file of the second respondent and direct the respondents herein to produce the body of Sundarasoohan, son of Raji Gounder, aged about 44 years and residing at Uthodaikadu, Kattukottai, Akkarapalayam, Chinnasalem Taluk, Kallakurichi District and set him at liberty.

For Petitioner	:	Ms.Elizabeth Rani Mr.S.Karthikeyan
For Respondents	:	Mr.R.Muniyapparaj Additional Public Prosecutor Assisted by Mr.M.Sylvester John, 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 mother of detenu assailing a 'preventive detention order dated 15.08.2022 bearing reference D.O.No.C2/40/2022 [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 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 offence under Boy Missing, altered to Sections 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. Ms.Elizabeth Rani, learned counsel representing the counsel on record for petitioner and Mr.R.Muniyapparaj, learned State Additional Public Prosecutor assisted by Mr.M.Sylvester John, 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 10th 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.C2/40/2022 made by the second respondent is set aside and the detenu Thiru.Sundarasoohan, male aged 44 years, son of Thiru.Raji Gounder, 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.)

30.03.2023

Index : Yes

Speaking order

Neutral Citation : Yes

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



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To

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Madras High Court
Chennai



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and
M.NIRMAL KUMAR, J.,**

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