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H.C.P.No.1849 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.03.2023

CORAM

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

H.C.P.No.1849 of 2022

R.Manjula

.. Petitioner

Vs

- 1.The State of Tamil Nadu,
Rep. by its Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George, Chennai -9.
- 2.The District Magistrate and District Collector,
Salem District.
- 3.The Superintendent of Police,
Salem District.
- 4.The Superintendent,
Central Prison, Salem – 636 007.
- 5.State rep. by The Inspector of Police,
Magundanchavadi Police Station,
Salem District
[Crime No.236 of 2022]

.. Respondents

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 leading

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to the detention of petitioner's husband the detenu Thiru.Raja, aged 44, son of Kittappan, presently detained in Central Prison, Salem under Act 14/1982 branded as 'Goonda' vide the detention order dated 29.08.2022 in C.M.P.No.21/Goonda/C2/2022, on the file of the second respondent herein directing to produce the person or body of the detenu Thiru.Raja, aged 44, son of Kittappan, before this Court and thereafter set him at liberty.

For Petitioner : Mr.B.Vasudevan
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 wife of detenu assailing a 'preventive detention order dated 29.08.2022 bearing reference C.M.P.No.21/GOONDA/C2/2022' [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.

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,



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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.236/2022 on the file of Magudamchavadi Police Station for alleged offences under Sections 7(1), 7(3) of Tamil Nadu Lottery Regulation Rule r/w. Sections 420, 294(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.

4. Mr.B.Vasudevan learned 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. Elaborating on the submission, learned counsel drew our attention to page 144 of the booklet which is the Arrest Intimation form. No Tamil translation of this form has been furnished to the detenu. We had the benefit of perusing the booklet. We also noticed that Arrest Intimation form 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.

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**



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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 Arrest Intimation form which has been relied on as part of the grounds of detention qua impugned detention order is a crucial form and not furnishing the correct translation of the same



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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 29.08.2022 bearing reference C.M.P.No.21/GOONDA/C2/2022 made by the second respondent is set aside and the detenu Thiru.Raja, male, aged 44 years, son of Thiru.Kittappan 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.)
27.03.2023

Index : Yes / No
Neutral Citation : Yes / No
Speaking Order/Non-Speaking Order
cse

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

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