



H.C.P.No.1872 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.04.2023

CORAM

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

H.C.P.No.1872 of 2022

Malarkodi

.. Petitioner

Vs

- 1.The State of Tamil Nadu,
Rep. by its Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George, Chennai 600009.
- 2.The Deputy Inspector General of Police,
Salem Range and Commissioner of Police,
Salem City (FAC).
- 3.The Superintendent,
Central Prison, Salem 636 007.
- 4.State Rep. by the Inspector of Police,
Shevapet Police Station,
Salem District.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus calling for the entire records leading to the detention of petitioner's son, the detenu Thiru.Saravanan, aged 42 years, Son of Madheswaran, presently

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detained in Central Prison, Salem, under Act 14/1982, branded as 'Immoral Traffic Offender' vide detention order dated 15.07.2022 in C.M.P.No.73/I.T.O./Salem City/2022, on the file of the 2nd respondent herein, directing to produce the person or body of the detenu Saravanan, aged 42, Son of Madheswaran, before this Court and thereafter, set him at liberty from the Central Prison, Salem, by setting aside the above order.

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 15.07.2022 bearing reference C.M.P.No.73/ITO/Salem City/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 'Immoral Traffic Offender' within the meaning of Section 2(g) of Act 14 of 1982.

3. There are two adverse cases. The ground case which is the sole substratum of the impugned detention order is Crime No.178 of 2022 on the file of Shevapet Police Station for alleged offences under Sections 3(1), 4(1), 5(1)(d), 7(1)(a) of Immoral Traffic (Prevention) Act, 1956. 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 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 in his challenge against 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 Nos.19 and 20 of the grounds booklet which is Form – 91 List of Property sent to Magistrate. No Tamil translation of this form has been furnished to the detenu.

6. As this turns on obtaining facts which are before us learned State Additional Public Prosecutor does not have much of a say.

7. Be that as it may we are informed that the literacy level of the detenu is 5th 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**. The question which the Honourable Bench of the Supreme Court addressed itself to in a similar fact situation is

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captured in paragraph 6 and the manner in which a Honourable 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 detainee, 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 detainee be set free forthwith unless she is required to be detained in any other case. The appeal is accordingly allowed. '

8. Applying *Powanammal* principle, we have no hesitation in saying that the impugned detention order in the case on hand deserves to be dislodged.

9. Apropos, the sequitur is, captioned HCP is allowed. Impugned detention order dated 15.07.2022 bearing reference C.M.P.No.73/I.T.O./Salem City/2022 made by the second respondent is set aside and the detenu Thiru.Saravanan, male, aged 42 years, son of

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Thiru.Madheswaran 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.)
11.04.2023

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.

To

- 1.The Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George, Chennai 600009.
- 2.The Deputy Inspector General of Police,
Salem Range and Commissioner of Police,
Salem City (FAC).
- 3.The Superintendent,
Central Prison, Salem 636 007.
- 4.The Inspector of Police,
Shevapet Police Station,
Salem District.
- 5.The Public Prosecutor
High Court, Madras.

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**and
M.NIRMAL KUMAR, J.,**

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