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HCP No.1854 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.02.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

and

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

H.C.P.No.1854 of 2022

Dharmalingam
S/o.Chinnathambi

..

Petitioner

Vs.

1. The State of Tamil Nadu
Reptd. By its Secretary to the Government
Prohibition and Excise Department
Secretariat, Fort. St.George
Chennai – 600 009
2. The Commissioner of Police
Salem City
Salem
3. The Superintendent of Prison
Central Prison
Salem
4. The Superintendent of Police
Salem District
Salem

Page Nos.1/7



HCP No.1854 of 2022

5. The Inspector of Police
Azhagapuram Police Station
Salem

.. 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 pertaining to the order of detention passed in C.M.P.No.45/Goonda/Salem City/2022 dated 23.05.2022 passed by the second respondent and set aside the same and direct the respondents to produce the petitioner's husband by name Thiru.Chinnaraja, son of Dharmalingam, aged 34 years now detained in Central Prison, Salem before this Court and set him at liberty.

For Petitioner : Mr.K.Rahul

For Respondents : Mr.R.Muniyapparaj
Additional Public Prosecutor

ORDER

[Order of the Court was made by M.SUNDAR, J.,]

In the captioned 'Habeas Corpus Petition' ['HCP' for the sake of brevity and convenience], father of the detenu is the petitioner and a 'detention order dated 23.05.2022 bearing reference C.M.P.No.45/Goonda/Salem City/2022' [hereinafter 'impugned detention order' for the sake of brevity and convenience] made by the 'second respondent' [hereinafter 'Detaining Authority' for the sake of convenience and clarity] has been called in question.

Page Nos.2/7



HCP No.1854 of 2022

2. To be noted, in and by the impugned detention order, the detenu has been detained branding him as 'Goonda' within the meaning of 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 14 of 1982)' [hereinafter 'Act 14 of 1982' for the sake of convenience and clarity].

3. Mr.K.Rahul, learned counsel for petitioner and Mr.R.Muniyapparaj, learned Additional Public Prosecutor for all respondents are before us.

4. It is not necessary to be detained by further facts as the matter turns on two short points. That short point is, in the grounds of detention supplied to the detenu between pages 81 and 82, there are four blank pages in which signatures of the detenu have been taken. Likewise, between pages 114 and 115, there is one blank paper and the detenu's signature has been taken in the same. As a sample of these five blank pages, a scanned production is set out hereunder below for clarity:



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HCP No.1854 of 2022

சென்னை உயர் நீதிமன்றம்
சட்ட அலுவலகம்
சென்னை - 600 009
தமிழக உயர் நீதிமன்றம்
சட்ட அலுவலகம்
சென்னை - 600 009
தமிழக உயர் நீதிமன்றம்
சட்ட அலுவலகம்
சென்னை - 600 009



HCP No.1854 of 2022

5. It is imperative that the grounds of detention is supplied to the detenu. As regards Act 14 of 1982, there is a statutory mandate in Section 8(1) that it has to be supplied within five days from the date of detention. In the case on hand, the five blank pages in which signatures of the detenu have been obtained turns on two points. One point is, non-application of mind and another appoint is infraction of petitioner's right to make an effective representation against the impugned detention order which is a constitutional safeguard ingrained in Clause (5) of Article 22 of the Constitution of India.

6. We are convinced that the above point is good enough to dislodge the impugned detention order.

7. Ergo, the sequitur is, impugned detention order dated 23.05.2022 bearing reference C.M.P.No.45/Goonda/Salem City/2022 made by the second respondent is set aside and detenu Mr. Chinnaraja, aged 34, son of Mr. Dharmalingam, now detained in Central Prison, Salem is directed to be set at liberty forthwith unless required in connection with any other case/s.

Page Nos.5/7



HCP No.1854 of 2022

Captioned HCP ordered on above terms.

WEB COPY

(M.S.,J.)

(M.N.K.,J.)

13.02.2023

Index: No

Neutral Citation : No

gpa

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

To

1. The Secretary to the Government
Prohibition and Excise Department
Secretariat, Fort. St.George
Chennai – 600 009
2. The Commissioner of Police
Salem City
Salem
3. The Superintendent of Prison
Central Prison
Salem
4. The Superintendent of Police
Salem District
Salem
5. The Inspector of Police
Azhagapuram Police Station
Salem
6. The Public Prosecutor
Madras High Court

Page Nos.6/7



WEB COPY



HCP No.1854 of 2022

M.SUNDAR, J.,
and
M.NIRMAL KUMAR, J.,

gpa

H.C.P.No.1854 of 2022

13.02.2023

Page Nos.7/7