



H.C.P.No.1887 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.1887 of 2022

Malathi

.. Petitioner

Vs.

1.The Secretary to the Government,
Home Prohibition and Excise Department,
Secretariat, Chennai – 09.

2.The Commissioner of Police,
Salem City.

3.The Superintendent of Prison,
Central Prison, Salem-7.

4.The Inspector of Police,
Hasthampatty Police Station,
Salem City.

.. 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 in connection with the order of detention passed by the second respondent on 12.09.2022

Page Nos.1/7



H.C.P.No.1887 of 2022

in C.M.P.No.111/Goonda/Salem City/2022 against the petitioner's husband Srirangan, Male, aged 43 years S/o.Perumal who is confined at Central Prison, Salem and set aside the same and direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner : Mr.D.Balaji
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 / detenu assailing a 'preventive detention order dated 12.09.2022 bearing reference C.M.P.No.111/Goonda/Salem City/2022' (hereinafter 'impugned detention order' for the sake of convenience). To be noted, fourth respondent is the sponsoring authority and second respondent is the detaining authority as the 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,

Page Nos.2/7



H.C.P.No.1887 of 2022

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 'Goonda' within the meaning of Section 2(f) of Act 14 of 1982.

3. There is one adverse case and one ground case. The ground case which is the substratum of the impugned detention order is Crime No.476/2022 on the file of Hasthampatty Police Station for alleged offences under Sections 341, 392 read with 397 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 in to the factual matrix or be detained further by facts.

4. Mr.D.Balaji, 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.



H.C.P.No.1887 of 2022

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5. Notwithstanding very many averments and grounds that have been raised in the support affidavit, Mr.D.Balaji, learned counsel on record for petitioner, in the hearing predicated his campaign against the impugned preventive detention order on one point and that point turns on copy of confession statement of co-accused which has been relied on as part of the grounds is completely illegible. To be noted, the grounds on which the impugned preventive detention order has been made has been supplied to the detenu in the form of booklet [hereinafter referred as 'the said booklet' for the sake of convenience and clarity], pages 72 to 78 of the booklet as served on the detenu were placed before us and a careful perusal of the same shows that it is a confession statement of co-accused and the same is completely illegible. Learned counsel submits that this has hampered the right of the detenu to make an effective representation. As this matter turns on illegible copy, learned Additional Public Prosecutor really does not have much of a say and this is more so as the said booklet supplied to the detenu has been placed before us.

6. Right of the detenu to make an effective representation qua the



H.C.P.No.1887 of 2022

preventive detention order is a Constitutional safeguard ingrained in Clause (5) of Article 22 of the Constitution of India. In the light of the narrative thus far, this Constitutional safeguard is hampered. The sequitur is, the impugned preventive detention order deserves to be dislodged.

7.Apropos, the sequitur is, captioned HCP is allowed. Impugned detention order dated 12.09.2022 bearing reference C.M.P.No.111/Goonda/Salem City/2022 made by the second respondent is set aside and the detenu Thiru.Srirangan, male, aged 43 years, son of Thiru.Perumal 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

Speaking / Non-speaking

Neutral Citation : Yes / No

cse

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

Page Nos.5/7



H.C.P.No.1887 of 2022

To

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- 1.The Secretary to the Government,
Home Prohibition and Excise Department,
Secretariat, Chennai – 09.
- 2.The Commissioner of Police,
Salem City.
- 3.The Superintendent of Prison,
Central Prison, Salem-7.
- 4.The Inspector of Police,
Hasthampatty Police Station,
Salem City.
- 5.The Public Prosecutor
High Court, Madras.



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H.C.P.No.1887 of 2022

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

cse

H.C.P.No.1887 of 2022

27.03.2023

Page Nos.7/7