



WEB COPY



H.C.P.No.1883 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.1883 of 2022

Kamatchi

.. 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.

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 in C.M.P.No.112/Goonda/Salem City/2022 against the petitioner's husband

Page Nos.1/7



H.C.P.No.1883 of 2022

Sakthiprabhu, Male, aged 32 years S/o.Krishnamoorthy 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.112/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, Sand-offenders, Sexual-offenders, Slum-grabbers and Video Pirates Act, 1982



H.C.P.No.1883 of 2022

(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 are two adverse cases 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.

5. Notwithstanding very many averments and grounds that have been raised in the support affidavit, Mr.D.Balaji, learned counsel on record for



H.C.P.No.1883 of 2022

petitioner, in the hearing, predicated his campaign against the impugned preventive detention order on one point and that point turns on copy of an order for detention in custody qua Form No.59 [Section 167 of Criminal Procedure Code] 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 a booklet and the same shall hereinafter be referred to as 'said booklet' for the sake of convenience and clarity], pages 117 and 118 of said booklet, as served on the detenu were placed before us and a careful perusal of the same shows that it is a form of order for detention in custody of an accused person qua Form No.59 [Section 167 of Criminal Procedure Code] and the hand written part of the order 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 and we had the benefit of perusing the same as already alluded to.

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



H.C.P.No.1883 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, we have no difficulty in coming to the conclusion that this Constitutional safeguard is hampered. The sequitur is, the impugned preventive detention order deserves to be dislodged.

7.Apropos, the further sequitur is, captioned HCP is allowed. Impugned detention order dated 12.09.2022 bearing reference C.M.P.No.112/Goonda/Salem City/2022 made by the second respondent is set aside and the detenu Thiru.Sakthiprabhu, male, aged 32 years, son of Thiru.Krishnamoorthy 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.

To

Page Nos.5/7



H.C.P.No.1883 of 2022

WEB COPY

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.

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

5.The Public Prosecutor
High Court, Madras.



WEB COPY



H.C.P.No.1883 of 2022

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

cse

H.C.P.No.1883 of 2022

27.03.2023

Page Nos.7/7