



H.C.P.No.1914 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.04.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

H.C.P.No.1914 of 2022

LEELA

W/o Late Dhamodharan

.. Petitioner

Vs.

1. The State of Tamil Nadu,
Rep. by its Secretary of Government,
Home, Prohibition and Excise Department,
Fort St.George, Chennai.9.
2. The Commissioner of Police,
Salem City, Salem District.
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 order or direction in the nature of WRIT OF HABEAS

Page Nos.1/8



H.C.P.No.1914 of 2022

CORPUS, to call for the entire records leading to the detention of petitioner's son, the Detenu Thiru.Vijaykumar, aged 47, son of Damodharan, presently detained in Central Prison, Salem, under Act 14/1982, branded as 'Goonda' vide the Detention order dated 17.8.2022 in C.M.P.No.88/Goonda/Salem City/2022, on the file of the 2nd Respondent herein, directing to produce the person or body of the Detenu Thiru.Vijaykumar, aged 47 son of Dhamodharan, before this Hon'ble 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, Advocate

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 mother of the detenu assailing a 'preventive detention order dated 17.08.2022 bearing reference C.M.P.No.88/Goonda/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 the impugned detention



H.C.P.No.1914 of 2022

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 '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 sole substratum of the impugned detention order is Crime No.207 of 2022 on the file of Shevapet Police Station for alleged offences under Sections 273 and 328 of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] and Sections 6 and 24(1) of Cigarette and Other Tobacco Products Act, 2003. 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.



H.C.P.No.1914 of 2022

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.

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 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.7 to 10 of the booklet which is Arrest / Court surrender form. No Tamil translation of this order has been furnished to the detenu. We had the benefit of perusing the booklet. We also noticed that Arrest / Court surrender 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.



H.C.P.No.1914 of 2022

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 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. '



H.C.P.No.1914 of 2022

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7. We find that the aforementioned **Powanammal** case applies in all fours to the case on hand as we find that Arrest / Court surrender form which has been relied on as part of the grounds of detention qua impugned detention order is a crucial document and not furnishing the same in Tamil the lone language known to the detenu has impaired his constitutional right to make an effective representation of the impugned detention order. It is also to be noted, that Page No.9 is completely illegible and not readable at all. We therefore have no hesitation in saying that the impugned detention order deserves to be dislodged.

8. Before concluding, we also remind ourselves that preventive detention is not a punishment and HCP is a high prerogative writ.

9. Apropos, the sequitur is, captioned HCP is allowed. Impugned detention order dated 17.08.2022 bearing reference C.M.P.No.88/Goonda/Salem City/2022 made by the second respondent is set aside and the detenu Thiru.Vijayakumar, aged 47 years, son of



H.C.P.No.1914 of 2022

Damodaran, 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.)

03.04.2023

Index : Yes / No

Speaking / Non-speaking

Neutral Citation : Yes / No

mk

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

To

1. The State of Tamil Nadu,
Rep. by its Secretary of Government,
Home, Prohibition and Excise Department,
Fort St.George, Chennai.9.
2. The Commissioner of Police,
Salem City, Salem District.
3. The Superintendent,
Central Prison, Salem 636 007
4. STATE; rep by the Inspector of Police,
Shevapet Police Station,
Salem District.
5. The Public Prosecutor
High Court, Madras.

Page Nos.7/8



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H.C.P.No.1914 of 2022

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

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H.C.P.No.1914 of 2022

03.04.2023

Page Nos.8/8