



H.C.P.No.1985 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.03.2023

CORAM

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

H.C.P.No.1985 of 2022

Gowthami

.. Petitioner

Vs

State rep. by

1.The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Fort St.George,
Chennai -9.

2. The Commissioner of Police,
Salem City.

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

4. The Inspector of Police,
Annadanappatty Police Station,
Salem District.

.. 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 C.M.P.No.80/Goonda/Salem City/2022 dated 27.07.2022 on the file of the

Page Nos.1/9



H.C.P.No.1985 of 2022

Commissioner of Police, Salem City, Salem, the second respondent herein and quash the same as illegal and direct the respondent to produce the detenu Thiru.Karthick, aged 37 years son of Balakrishnan now confined at Central Prison, Salem before this Court and set him at liberty.

For Petitioner : Mr.S.Sengkodi
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 27.07.2022 bearing reference C.M.P.No.80/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 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,



H.C.P.No.1985 of 2022

WEB COURT

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 is one adverse case. The ground case which is the sole substratum of the impugned detention order is Crime No.293 of 2022 on the file of Annadanapatty Police Station for alleged offences under Sections 341, 392 read with 397, 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 into the factual matrix or be detained further by facts.

4. Mr.S.Sengkodi, learned counsel representing 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.



H.C.P.No.1985 of 2022

WEB COPY

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 40 of the booklet which is the arrest intimation form. No Tamil translation of this form has been furnished to the detenu. We had the benefit of perusing the booklet. We also noticed that the arrest intimation form forms part of the ground on which the impugned detention order has been made.

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



H.C.P.No.1985 of 2022

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 Honourable Bench of the Supreme Court addressed itself to in a similar fact situation has been captured in paragraph 6 and the manner in which Honourable Bench of the Supreme Court answered this question has been captured in paragraph 16. To be noted, Pownammal 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. '

8.In the case on hand, we find that arrest intimation form which has



H.C.P.No.1985 of 2022

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. We therefore have no hesitation in saying that the impugned detention order deserves to be dislodged.

9.Apropos, the sequitur is, captioned HCP is allowed. Impugned detention order dated 27.07.2022 bearing reference C.M.P.No.80/Goonda/Salem City/2022 made by the second respondent is set aside and the detenu Thiru.Karthick, male, aged 37 years, son of Thiru.Balakrishnan 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.)
16.03.2023

Index : Yes / No
Neutral Citation : Yes / No
cse

P.S: Registry to forthwith communicate this order to Jail authorities in

Page Nos.6/9



Central Prison, Salem.

WEB COPY



H.C.P.No.1985 of 2022



H.C.P.No.1985 of 2022

WEB COPY

To

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2. The Commissioner of Police,
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3. The Superintendent of Prison,
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4. The Inspector of Police,
Annadanappatty Police Station,
Salem District.
5. The Public Prosecutor
High Court, Madras.

Page Nos.8/9



WEB COPY



H.C.P.No.1985 of 2022

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

cse

H.C.P.No.1985 of 2022

16.03.2023

Page Nos.9/9