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H.C.P.No.2044 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.04.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

H.C.P.No.2044 of 2022

Tmt.Rizvana

.. Petitioner/
Wife of detenu

Vs.

1. The State of Tamil Nadu
Represented by its
Secretary to Government
Home, Prohibition and Excise Department
Secretariat
Chennai – 600 009
2. The Chairman
Advisory Board
Singaravelar Maligai
Ground Floor
Chennai Collectorate
No.32, Rajaji Salai
Chennai - 1
3. The Commissioner of Police
Salem City
Office of the Commissioner of Police
Linemedu, Salem

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4. The Superintendent of Prison
Salem Central Prison
Salem
5. The Inspector of Police
Sooramangalam Police Station
Salem City
Salem

... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus calling for the records relating to the order of detention passed by the 3rd respondent dated 29.09.2022 in C.M.P.No.127/Goonda/Salem City/2022, quash the same and direct the respondents to produce the body of the detenu Sathiq Ali, male aged 37, son of Akbar Basha, (now lodged at Central Prison, Salem) before this Court and set him at liberty.

For Petitioner	:	Mr.V.Elangovan
For Respondents	:	Mr.R.Muniyapparaj Additional Public Prosecutor Assisted by Mr.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 wife of detenu assailing a 'preventive detention order dated 29.09.2022 bearing reference C.M.P.No.127/Goonda/Salem City/2022' [hereinafter 'impugned detention order' for the sake of convenience and



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brevity]. To be noted, fifth respondent is the sponsoring authority and third respondent is the detaining authority as impugned detention order has been made by third 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 (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. The ground case which is the sole substratum of the impugned detention order is Crime No.563 of 2022 on the file of Sooramangalam Police Station for alleged offences under Sections 6(a) read with Section 24(1) of Cigarette and Other Tobacco Products Act, 2003 read with Sections 273 and 328 of 'Indian Penal Code, 1860 (Act 45 of 1860)' ['IPC' for brevity]. 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.



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4. Mr.V.Elangovan, learned counsel on record for petitioner and Mr.R.Muniyapparaj, learned State Additional Public Prosecutor, assisted by Mr.Sylvester John, Advocate, for all the respondents are before us.

5. To be noted, though several points have been raised /urged in the support affidavit qua captioned HCP, Mr.V.Elangovan, learned counsel on record for petitioner submits that the Arrest Intimation Form which has been relied on by the Detaining Authority has been provided to the detenu as part of the grounds booklet, the same is in English but no Tamil translation has been provided. Learned counsel submits that literacy level of the detenu is 8th Standard in School. Learned counsel submits that the detenu is a school dropout.

6. Be that as it may, learned counsel points out that HCP filed by the co-detenu was allowed on the same point vide order dated 28.03.2023 in H.C.P.No.2037 of 2022. To be noted, name of the petitioner in H.C.P.No.2037 of 2022 is Subanu. It is further to be noted, Subanu's case is reported in Neutral Citation of this Court vide **2023:MHC:1410**. A scanned reproduction of this Subanu's case is as follows:



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2023:MHC:1410



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H.C.P.No.2047 of 2022



IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 28.03.2023

CORAM

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

H.C.P.No.2037 of 2022

Subanu

.. Petitioner

Vs

1. The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Fort St.George, Chennai -9.
2. The Commissioner of Police,
Salem City, Salem District.
3. The Superintendent of Prison,
Central Prison - Salem, Salem District.
4. State rep. By its
The Inspector of Police,
Sooramangalam 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 entire
records relating to the petitioner's husband detention under Tamil
Nadu Act 14 of 1982 vide detention order dated 29.09.2022 on the file

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of the second respondent made in proceedings Memo
C.M.P.No.128/Goonda/Salem City/2022 quash the same as illegal and
consequently direct the respondents herein to produce the petitioner's
husband namely Rasag Bhal @ Kajaputheen, S/o.Abdul Hameed, aged
57 years before this Court and set the petitioner's husband at liberty
from detention, now the petitioner's husband detained at Central
Prison, Salem.

For Petitioner : Mr.W.Carmyles Gandhi
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 29.09.2022 bearing reference C.M.P.No.128/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.

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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. The ground case which is the sole substratum of the impugned detention order is Crime No.563 of 2022 on the file of Sooramangalam Police Station for alleged offences under Section 6(a) read with 24(1) of Cigarette and Other Tobacco Products Act, 2003 read with 2/3, 328 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.

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4. Mr.W.Camyies Gandhi, learned counsel for petitioner and Mr.R.Muniyapparaj, learned State Additional Public Prosecutor assisted by Mr.M.Sylvester John 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 in his campaign 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 77 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.

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7. Be that as it may we are informed that the literacy level of the detenu is 8th 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**. The question which the Honourable Bench of the Supreme Court addressed itself to in a similar fact situation is captured in paragraph 6 and the manner in which a Honourable 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 detenu, 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 detenu 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 been relied on as part of the grounds of detention qua

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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 sequelur is, captioned HCP is allowed. Impugned detention order dated 29.09.2022 bearing reference C.M.P.No.128/Goonda/Salem City/2022 made by the second respondent is set aside and the detenu Thiru.Rasaq Bhai @ Kajaputheen, male, aged 57 years, son of Thiru.Abdul Hameed 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.)
28.03.2023

Index : Yes / No
Neutral Citation : Yes / No
mmi

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



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7. Learned Prosecutor's contention has been captured in **Subanu's** case and as the same point is available to the detenu in the case on hand also, we deem it appropriate to not to delve into the submissions. It will suffice to say that Subanu's case applies in all fours to the case on hand.

8. Apropos, the sequitur is, captioned HCP is allowed. Impugned detention order dated 29.09.2022 bearing reference C.M.P.No.127/Goonda/Salem City/2022 made by the third respondent is set aside and the detenu Thiru.Sathiq Ali, aged 37 years, son of Thiru.Akbar Basha 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.)
05.04.2023

Index : Yes
Speaking
Neutral Citation : Yes
gpa

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



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To

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1. The Secretary to Government
Home, Prohibition and Excise Department
Secretariat
Chennai – 600 009
2. The Chairman
Advisory Board
Singaravelar Maligai
Ground Floor
Chennai Collectorate
No.32, Rajaji Salai
Chennai - 1
3. The Commissioner of Police
Salem City
Office of the Commissioner of Police
Linemedu, Salem
4. The Superintendent of Prison
Salem Central Prison
Salem
5. The Inspector of Police
Sooramangalam Police Station
Salem City
Salem
6. The Public Prosecutor
Madras High Court, Chennai



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

gpa

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