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H.C.P.No.2113 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.2113 of 2022

Jarina Begam

.. Petitioner

Vs

- 1.The State Rep. by
The Secretary to Government,
Home, Prohibition and Excise Department,
Government of Tamil Nadu,
Fort St. George, Chennai - 9.
- 2.The Commissioner of Police,
Salem City Police, Office of the Commissioner of Police,
Salem-636006.
- 3.The Superintendent of Prison,
Central Prison, Salem.
- 4.The Inspector of Police,
Steel Plant Police Station,
Salem District.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus calling for the records of the 2nd respondent in connection with order made in Proceedings C.M.P.No.57/Goonda/Salem/2022, dated 10.06.2022, passed against the petitioner's son Rihan Kuroshi, aged 25 years, Son of Shakil

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Kuraishi, who is now confined at Central Prison, Salem, and to quash the same and direct the respondents to produce the detenu before this court and set him at liberty forthwith.

For Petitioner : Mr.S.Thirugnanam
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 mother of detenu assailing a 'preventive detention order dated 10.06.2022 bearing reference C.M.P.No.57/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, Drug-offenders, Forest-offenders, Goondas, Immoral traffic offenders, Sand-offenders, Sexual-offenders, Slum-grabbers and Video



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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.The ground case which is the sole substratum of the impugned detention order is Crime No.124 of 2020 on the file of Steel Plant Police Station for alleged offences under Sections 147, 148 and 302 of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] subsequently altered into one under Sections 147, 148, 120(b), 449 and 302 IPC. 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.Thirugnanam, learned counsel 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



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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. We had the benefit of perusing the booklet.

6. As this turns on obtaining facts which are before us learned State Additional Public Prosecutor does not have much of a say.

7. It is clear from the confession statement that the detenu is conversant with only one language and that one language is Hindi. We also find from the confession statement that confession statement which has been recorded in Tamil has been translated and conveyed to the detenu in Hindi the lone language with which the detenu is conversant. One other aspect of the matter which we notice in the confession statement is, the detenu has signed the confession statement only in Hindi. Therefore, it is clear that neither the detention order nor the grounds booklet have been supplied to the detenu in the lone language with which the detenu is conversant. In the case on



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hand, there is no disputation or contestation that the literacy level of the detenu is 9th standard in school and he is a school drop out.

8. 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 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. '



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9. In the case on hand, we find, not furnishing the confession statement in Hindi 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.

10. Apropos, the sequitur is, captioned HCP is allowed. Impugned detention order dated 10.06.2022 bearing reference C.M.P.No.57/Goonda/Salem City/2022 made by the second respondent is set aside and the detenu Thiru.Rihan Kuroshi, male, aged 25 years, son of Thiru.Shakil Kurayshi 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
Neutral Citation : Yes
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P.S: Registry to forthwith communicate this order to Jail authorities in Central Prison, Salem.

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To

1. The Secretary to Government,
Home, Prohibition and Excise Department,
Government of Tamil Nadu,
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2. The Commissioner of Police,
Salem City Police, Office of the Commissioner of Police,
Salem-636006.
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5. The Public Prosecutor,
High Court, Madras.



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

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