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H.C.P.No.2198 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.2198 of 2022

Karthi
S/o.Varadhan

.. Petitioner /
son of detainee

Vs

1. The State of Tamil Nadu,
Rep. by its Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai – 600 009.
2. The District Collector and District Magistrate
Thiruvannamalai District
Thiruvannamalai
3. The Superintendent of Police
Thiruvannamalai District
Thiruvannamalai
4. The Inspector of Police
Town Police Station
Tiruvannamalai, Tiruvannamalai District
5. The Superintendent
Special Prison for Women, Vellore

.. Respondents



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Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus to call for the records relating to petitioner's mother detention under Tamil Nadu Act 14 of 1982 vide detention order dated 14.10.2022 on the file of the second respondent herein made in proceedings D.O.No.93/2022-C2, quash the same as illegal and consequently direct the respondents herein to produce the petitioner's mother namely Ananthi, aged 57 years, wife of Varadhan, before this Court and set her at liberty, now petitioner's mother detained at Special Prison for Women, Vellore.

For Petitioner : Mr.M.Mohamed Saifulla
for Mr.C.C.Chellappan

For Respondents : Mr.R.Muniyapparaj
Additional Public Prosecutor
Assisted by
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 son of detenu assailing a 'preventive detention order dated 14.10.2022 bearing reference D.O.No.93/2022-C2 [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 detainee is a 'Bootlegger' within the meaning of Section 2(b) of Act 14 of 1982.

3. There are three adverse cases. The ground case which is the sole substratum of the impugned detention order is Crime No.339 of 2022 on the file of Tiruvannamalai Town Police Station for alleged offences under Sections 4(1)(i), 4(1)(aaa) read with Section 4(1-A)(ii) of Tamil Nadu Prohibition Act, 1937 and Section 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.M.Mohamed Saifulla, learned counsel representing the 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.

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 detainee is conversant with. Elaborating on the submission, learned counsel drew our attention to pages 51 and 52 of the booklet which are Remand Order dated 15.09.2022 and Remand Extension Order dated 29.09.2022. No Tamil translation of these documents have been furnished to the detainee. We had the benefit of perusing the booklet. We also noticed that Remand Order and Remand Extension Order form 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.



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6. Be that as it may, we are informed that the literacy level of the detainee is unlettered. We are also informed that the detainee 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 detainee, 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 detainee be set free forthwith unless she is required to be detained in any other case. The appeal is accordingly allowed. '



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7. In the case on hand, we find that Remand Order and Remand Extension Order which have been relied on as part of the grounds of detention qua impugned detention order are crucial documents and not furnishing translation of the same in Tamil the lone language known to the detainee has impaired his constitutional right to make an effective representation qua the impugned detention order. We therefore have no hesitation in saying that the impugned detention order deserves to be dislodged.

8. Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 14.10.2022 bearing reference D.O.No.93/2022-C2 made by the second respondent is set aside and the detainee Ms.Ananthi, female, aged 57 years, wife of Mr.Varadhan 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

Neutral Citation : Yes

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P.S: Registry to forthwith communicate this order to Jail authorities in Special Prison for Women, Vellore.

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To
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1. The Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George, Chennai – 600 009.
2. The District Collector and District Magistrate
Thiruvannamalai District
Thiruvannamalai
3. The Superintendent of Police
Thiruvannamalai District
Thiruvannamalai
4. The Inspector of Police
Town Police Station
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5. The Superintendent
Special Prison for Women, Vellore
6. The Public Prosecutor
Madras High Court
Chennai



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

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