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H.C.P.No.2415 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.04.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE DR.JUSTICE D.NAGARJUN

H.C.P.No.2415 of 2022

Ambika
W/o.Vijay @ Selvakumar

.. Petitioner /
Detenu's wife

Vs

1. The State of Tamil Nadu
Rep. by its Additional Chief Secretary to Government
(Home), Prohibition and Excise Department
Secretariat, Fort St.George
Chennai – 600 009.
2. The District Collector and District Magistrate
O/o.District Collector and District Magistrate
Kallakurichi District
Kallakurichi
3. The Superintendent
Central Prison
Cuddalore District
4. The Superintendent of Police
O/o. Superintendent of Police
Kallakurichi District
Kallakurichi

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5. The Inspector of Police
Kachirayapalayam Police Circle
Kallakurichi District

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus calling for the entire records relating to the impugned order of detention passed by the second respondent in D.O.No.C2/48/2022 dated 15.09.2022 and set aside the same and consequently direct the respondents to produce the detenu Vijay @ Selvakumar, son of Chinnathambi, aged about 39 years, petitioner's husband, now confined at Central Prison, Cuddalore before this Court and set him at liberty forthwith.

For Petitioner	:	Mr.S.Saravana Kumar
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 wife of detenu assailing a 'preventive detention order dated 15.09.2022 bearing reference D.O.No.C2/48/2022 [hereinafter 'impugned detention order' for the sake of convenience and brevity].

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To be noted, fifth 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 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 'Bootlegger' within the meaning of Section 2(b) 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.226 of 2022 on the file of Kachirapalayam Police Station for alleged offences under Sections 4(1)(g), 4(1)(aaa) and 4(1-A) of Tamil Nadu Prohibition Act, 1937. 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.S.Saravana Kumar, 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 documents (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 pages 67, 69 & 70 and 72 & 73 of the booklet which are remand order, bail application in similar case and remand extension order respectively. No Tamil translation of these documents have been furnished to the detenu. We had the benefit of perusing the booklet. We also noticed that remand order, bail application in similar case 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 detenu is VIII Standard 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 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. '

7. In the case on hand, we find that remand order, bail application in similar case and remand extension order which have been relied on as part of the grounds of detention qua impugned



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detention order are crucial documents and not furnishing translation of the same in Tamil, the lone language known to the detenu 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 15.09.2022 bearing reference D.O.No.C2/48/2022 made by the second respondent is set aside and the detenu Thiru.Vijay alias Selvakumar, aged 39 years, son of Mr.Chinnathambi 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.)

(D.N.R.,J.)

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Index : Yes

Neutral Citation : Yes

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



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To

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6. The Public Prosecutor
Madras High Court
Chennai



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