



WEB COPY



H.C.P.No.2275 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.04.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

H.C.P.No.2275 of 2022

Shabana
W/o.Kasim

.. Petitioner /
Wife of detenu

Vs

1. The Secretary to Government
Home, Prohibition and Excise Department
Secretariat
Chennai – 600 009.
2. The District Collector and District Magistrate
Tiruvannamalai District, Tiruvannamalai
3. The Superintendent of Police
Tiruvannamalai District
Tiruvannamalai
4. The Superintendent of Prison
Central Prison, Vellore

Page Nos.1/8



H.C.P.No.2275 of 2022

5. The Inspector of Police
Tiruvannamalai East Police Station
Tiruvannamalai 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 in connection with the order of detention passed by the second respondent dated 03.11.2022 in D.O.No.101/2022-C2 against the petitioner husband Kasim, male aged 26 years son of Shabi Basha who is confined at Central Prison, Vellore and set aside the same and direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner	:	Ms.K.Sathiya for Mr.D.Balaji
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 03.11.2022 bearing reference D.O.No.101/2022-C2 [hereinafter 'impugned detention order' for the sake of convenience and brevity]. To be noted, fifth respondent is the sponsoring authority and second respondent is the



H.C.P.No.2275 of 2022

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 '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.517 of 2022 on the file of Tiruvannamalai East Police Station for an alleged offence under Section 399 of 'The Indian Penal Code (45 of 1860)' . 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. Ms.K.Sathiya, learned counsel representing the counsel on record



H.C.P.No.2275 of 2022

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 153 and 154 of the booklet which are Remand Order dated 13.10.2022 and Remand Extension Order dated 27.10.2022 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 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.

6. Be that as it may, we are informed that the literacy level of the



H.C.P.No.2275 of 2022

detenu is X Standard and he is a school drop out. We are also informed that the detenue 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 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. '

7. In the case on hand, we find Remand order and Remand



H.C.P.No.2275 of 2022

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 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 03.11.2022 bearing reference D.O.No.101/2022-C2 made by the second respondent is set aside and the detenu Thiru.Kasim, aged 26 years, son of Thiru.Shabi 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.)

20.04.2023

Index : Yes

Neutral Citation : Yes

gpa

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

Page Nos.6/8



H.C.P.No.2275 of 2022

To

WEB COPY

1. The Secretary to Government
Home, Prohibition and Excise Department
Secretariat
Chennai – 600 009.
2. The District Collector and District Magistrate
Tiruvannamalai District, Tiruvannamalai
3. The Superintendent of Police
Tiruvannamalai District
Tiruvannamalai
4. The Superintendent of Prison
Central Prison, Vellore
5. The Inspector of Police
Tiruvannamalai East Police Station
Tiruvannamalai District



WEB COPY



H.C.P.No.2275 of 2022

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

gpa

H.C.P.No.2275 of 2022

20.04.2023

Page Nos.8/8