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H.C.P.No.2301 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.04.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

H.C.P.No.2301 of 2022

Prakash
S/o.Raja

.. Petitioner /
Wife of detenu

Vs

1. The Secretary to the 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 Superintendent of Prison
Central Prison, Vellore

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5. The Inspector of Police
Tiruvannamalai Town Crime 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 21.10.2022 in D.O.No.96 of 2022-C2 against the petitioner, son of Prasanth, male aged 25 years, son of Prakash, 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 : 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 father of detenu assailing a 'preventive detention order dated 21.10.2022 bearing reference D.O.No.96/2022-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

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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 is one adverse case. The ground case which is the sole substratum of the impugned detention order is Crime No.130 of 2022 on the file of Tiruvannamalai Town Crime Police Station for alleged offence under Section 392 read with 397 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.



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4. Mr.D.Balaji, learned 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 59 to 62 of the booklet which are Remand order dated 19.09.2022, Remand Extension Orders dated 03.10.2022 and 17.10.2022 and bail application of the detenu in C.M.P.No.2811 of 2022 on the file of Principal District and Sessions Judge, Tiruvannamalai 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, Remand Extension Orders and bail application of the detenu form part of the ground on which the impugned detention order has been made. As this turns on



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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 detenu is V 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 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, Remand Extension Orders and bail application of the detenu 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 21.10.2022 bearing reference D.O.No.96/2022-C2 made by the second respondent is set aside and the detenu Thiru.Prasanth, aged 25 years, son of Thiru.Prakash is directed to be set at liberty forthwith,



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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.)

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Index : Yes

Speaking order

Neutral Citation : Yes

gpa

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

To

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Home, Prohibition and Excise Department
Secretariat
Chennai – 600 009.
2. The District Collector and District Magistrate
Thiruvannamalai District
Thiruvannamalai
3. The Superintendent of Police
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4. The Superintendent of Prison
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5. The Inspector of Police
Thiruvannamalai Town Crime Police Station
Thiruvannamalai District
6. The Public Prosecutor
Madras High Court
Chennai

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and
M.NIRMAL KUMAR, J.,

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