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H.C.P.No.2330 of 2022

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.2330 of 2022

P.Boothathan
S/o.Ponnaiah

.. Petitioner /
Brother of Detenu

Vs

1. State of Tamil Nadu rep. by
The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George, Chennai – 600 009.
- 2.The District Collector and District Magistrate
O/o.The District Collector and District Magistrate
Villupuram District
Villupuram
3. The Superintendent of Police
Villupuram District
Villupuram
4. The Superintendent
Special Prison for Women
Vellore

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5. The Inspector of Police
Mailam Police Station
Villupuram District
Villupuram

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus to call for the entire records in connection with the detention order passed in Rc.No.C2/26886/2022 dated 29.10.2022 on the file of the 2nd respondent herein and set aside the same as illegal and direct the respondents to produce the detenu Vijaya, wife of Sivagnanam, female, aged 61 years who is detained in Special Prison for Women, Vellore before this Court and set her at liberty.

For Petitioner	:	Ms.S.Vasavi Sridevi
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 brother of detenu assailing a 'preventive detention order dated 29.10.2022 bearing reference Rc.No.C2/26886/2022' [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 'Drug Offender' within the meaning of Section 2(e) of Act 14 of 1982.

3.There is no adverse case. The ground case which is the sole substratum of the impugned detention order is Crime No.432 of 2022 on the file of Mailam Police Station for alleged offence under Section 20(b)(ii)(B) of Narcotic Drugs and Psychotropic Substances Act, 1985. 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.Vasavi Sridevi, learned counsel on record for petitioner and



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Mr.R.Muniyapparaj, learned State Additional Public Prosecutor assisted by

Mr.M.Sylvester John, learned counsel for all respondents are before us.

5.Though several grounds have been urged in the support affidavit, learned counsel for petitioner at the hearing exhorted two points in his campaign against the impugned detention order and those two points turn on delay in considering a representation sent qua impugned detention order and not providing translated copy of a document (relied on by the detaining authority) in a language which the detenu is conversant with.. Elaborating on the submission of not providing translated copy, learned counsel drew our attention to page 56 of the booklet which is Remand order dated 06.10.2022. No Tamil translation of this document has been furnished to the detenu. We had the benefit of perusing the booklet. We also noticed that Remand order forms 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.As regards delay in considering the representation, learned State



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Additional Public Prosecutor submitted to the contrary and placed before us

a list of dates and the details of the same are as follows:

'Representation dated .. 07.11.2022
Representation received dated .. 10.11.2022
File submitted on dated .. 28.11.2022
Under Secretary dealt with on .. 28.11.2022
Deputy Secretary dealt with on .. 28.11.2022
Minister dealt with on .. 01.12.2022
Rejected letter prepared on .. 01.12.2022
Rejection letter sent to the detenu on .. 02.12.2022

Govt. Holidays falls on:

12.11.2022, 13.11.2022, 19.11.2022, 20.11.2022, 26.11.2022, 27.11.2022

S.No.	Representation	Column 6 to 7	Column 9 to 10
1.	No. of days	17	2
2.	No. of holidays	6	-
	No. of delay days	11	2
Total 13 days delay			

7.We find that even if the intervening public/Government holidays 12.11.2022, 13.11.2022, 19.11.2022, 20.11.2022, 26.11.2022 and 27.11.2022 are excluded, there is a delay of 13 days in considering the representation. We make it clear that the delay in considering the representation point in challenges to preventive detention orders cannot be



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decided quantitatively. It has to be decided qualitatively based on the facts, circumstances and the trajectory the representation has taken, in other words, it has to be decided on case to case basis. In the case on hand, we adopt such an approach and we find that 13 days delay vitiates the impugned detention order. We also hasten to make it clear that there can be no straight jacket formula in terms of number of days as regards this point is concerned and therefore, this order will not serve as precedent in all and every case.

8. 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:



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'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. '

9. In the case on hand, we find Remand Order which has been relied on as part of the grounds of detention qua impugned detention order is a crucial document 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.



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10 .Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 29.10.2022 bearing reference Rc.No.C2/26886/2022 made by the second respondent is set aside and the detenu Tmt.Vijaya, aged 61 years, wife of Thiru.Sivagnanam, 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.)

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Index : Yes

Neutral Citation : Yes

Speaking Order/ No

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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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O/o. The District Collector and District Magistrate
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5. The Inspector of Police
Mailam Police Station
Villupuram District
Villupuram
6. The Public Prosecutor,
High Court, Madras.



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

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