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H.C.P.No.2361 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.04.2023

CORAM

THE HONOURABLE MR.JUSTICE **M.SUNDAR**
and
THE HONOURABLE MR.JUSTICE **M.NIRMAL KUMAR**

H.C.P.No.2361 of 2022

Soniya

.. Petitioner

Vs

1.The State of Tamil Nadu
Rep. By Secretary to Government,
Prohibition and Excise Department,
Fort St.George, Chennai - 9.

2.The District Collector and District Magistrate,
Vellore District, Vellore.

3.The Superintendent of Police,
Vellore District, Vellore.

4.The Inspector of Police,
Gudiyatham Taluk Police Station,
Vellore District.

5.The Superintendent of Prison,
Central Prison, Vellore.

.. Respondents

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 the detention order dated 31.10.2022 passed by the second
respondent in his proceeding No.C3/D.O.No.106 of 2022 and to quash

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the same and direct the respondents herein to produce the petitioner's husband namely Vasanth, son of Venkatesan, aged about 34 years, who is presently undergoing detention in Central Prison, Vellore as "Bootlegger" before this Court and set him at liberty forthwith.

For Petitioner : Mr.R.Parthiban

For Respondents : Mr.E.Raj Thilak
Additional Public Prosecutor

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 31.10.2022 bearing reference C3/D.O.No.106/2022' [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.

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



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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 are three adverse cases. The ground case which is the sole substratum of the impugned detention order is Crime No.539 of 2022 on the file of Gudiyatham Prohibition Enforcement Wing for alleged offences under Sections 4(1)(i), 4(1)(aaa), 4(1-A)(ii) of Tamil Nadu Prohibition Act, 1937 r/w 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.

4. Mr.R.Parthiban, learned counsel on record for petitioner and Mr.E.Raj Thilak, learned State Additional Public Prosecutor for all respondents are before us.



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5. Though very many grounds have been raised in the support affidavit, learned counsel for petitioner at the hearing projected his argument in his challenge against 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 detenu is conversant with. Elaborating on the submission, learned counsel drew our attention to page No.61 of the grounds booklet which is the bail application filed by the arrestee. No Tamil translation of this bail petition has been furnished to the detenu. We had the benefit of perusing the booklet. We also noticed that the impugned preventive detention order refers to bail application filed by the arrestee and relevant portion reads as follows:

'.....I am aware that Thiru.Vasanth has filed a bail application in Principal Sessions Judge, Vellore in ground case in Gudiyatham Prohibition Enforcement Wing Crime No.539/2022, u/s.4(1)(i), (1)(aaa), 4(1-A)(ii) TNP Act, 1937 r/w 328 IPC in C.M.P.No.3271/2022 and the same is pending.....'

6. This bail application has also been furnished to the arrestee as part of the grounds booklet but admittedly translation of the same has not been given. As this turns on obtaining facts which



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are before us learned State Additional Public Prosecutor does not have much of a say.

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7. Be that as it may we are informed that the literacy level of the detenu is 10th standard in school 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**. The question which the Honourable Bench of the Supreme Court addressed itself to in a similar fact situation is captured in paragraph 6 and the manner in which a Honourable 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



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forthwith unless she is required to be detained in any other case. The appeal is accordingly allowed. '

8. Applying *Powanammal* principle, we have no hesitation in saying that the impugned detention order in the case on hand deserves to be dislodged.

9. Apropos, the sequitur is, captioned HCP is allowed. Impugned detention order dated 31.10.2022 bearing reference C3/D.O.No.106/2022 made by the second respondent is set aside and the detenu Thiru.Vasanth, male, aged 34 years, Son of Thiru. Venkatesan, 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.)
24.04.2023

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



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To

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Prohibition and Excise Department,
Fort St.George, Chennai - 9.
- 2.The District Collector and District Magistrate,
Vellore District, Vellore.
- 3.The Superintendent of Police,
Vellore District, Vellore.
- 4.The Inspector of Police,
Gudiyatham Taluk Police Station,
Vellore District.
- 5.The Superintendent of Prison,
Central Prison, Vellore.
- 6.The Public Prosecutor,
High Court, Madras.



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

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