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H.C.P.No.2379 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.03.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

H.C.P.No.2379 of 2022

Lakshmanan
S/o.Vadivel

.. Petitioner

Vs.

1. The State represented by
The Secretary to Government (Home)
Prohibition and Excise Department
Government of Tamil Nadu
Fort St.George
Chennai-600 009.
2. The District Collector / District Magistrate
Kallakurichi District
Kallakurichi.
3. The Superintendent of Police
Kallakurichi District
Kallakurichi.
4. The Superintendent of Prison
Central Prison
Cuddalore.

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5. The Inspector of Police
Chinnasalem Police Station
Kallakurichi District.

.. 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 pertaining to the order of detention dated 15.09.2022 passed by the 2nd respondent in D.O.No.C2/50/2022 dated 15.09.2022 and quash the same and produce the detenu Mr.Saranraj, S/o.Lakshmanan, aged about 34 years before this Hon'ble Court and set him at liberty and the detenu now has been confined at Central Prison, Cuddalore.

For Petitioner	:	Mr.D.Ahsok 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 father of the detenu assailing a 'preventive detention order dated 15.09.2022 bearing reference D.O.No.C2/50/2022' [hereinafter 'impugned detention order' for the sake of convenience and brevity]. To be



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noted, fifth respondent is the sponsoring authority and second respondent is the detaining authority as the 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 no adverse case. This solitary case which is the sole substratum of the impugned detention order is Crime No.237 of 2022 on the file of Chinnasalem Police Station for the alleged offences under Sections 147, 148, 294(b), 323, 324, 332, 353, 436, 506(ii) of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] read with Sections 3, 4 and 5 of the Tamil Nadu Property (Prevention of Damage



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and Loss) Act, 1992. 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.D.Ahsok Kumar, learned counsel on record for petitioner and Mr.R.Muniyapparaj, learned State Additional Public Prosecutor, assisted by Mr.M.Sylvester John, learned counsel 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 four 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 page Nos.84, 87, 88 to 91 and 92 of the booklet which are Judicial Form No.14, bail petition of the detenu in the ground case, bail order (rejection) of the detenu in the ground case and bail order in similar case. No Tamil translation of these documents have been furnished to the detenu. We had



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the benefit of perusing the booklet. We also noticed that the aforementioned four documents 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 detenu is 12th 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***, 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



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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. We find that the aforementioned **Powanammal** case applies in all fours to the case on hand as we find that the aforementioned four documents (Judicial Form No.14, bail petition of the detenu in the ground case, bail order (rejection) of the detenu in the ground case and bail order in similar case) which have been relied on as part of the grounds of detention qua impugned detention order are crucial documents and not furnishing the same in Tamil the lone language known to the detenu has impaired his constitutional right to make an effective representation of the impugned detention order. We therefore have no hesitation in saying that the impugned detention order deserves to be dislodged.



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8. Before concluding, we also remind ourselves that preventive detention is not a punishment and HCP is a high prerogative writ.

9. Apropos, the sequitur is, captioned HCP is allowed. Impugned detention order dated 15.09.2022 bearing reference D.O.No.C2/50/2022 made by the second respondent is set aside and the detenu Thiru.Saranraj, aged 34 years, son of Lakshmanan, 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

Speaking

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

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To

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6. The Public Prosecutor
High Court, Madras.

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