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HCP No.2374 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.02.2023

Coram

The Hon'ble Mr. Justice **M.SUNDAR**
and
The Hon'ble Mr. Justice **M.NIRMAL KUMAR**

H.C.P. No.2374 of 2022

Deepa

W/o.Senthamizhmurugan

... Petitioner(wife of detenu)

-vs-

- 1.The State of Tamil Nadu,
Rep. by its Secretary,
Department of Home, Prohibition & Excise
Fort St. George, Chennai – 600 009.
 - 2.The District Collector and District Magistrate,
Cuddalore, Cuddalore District.
 - 3.The Superintendent of Police,
Cuddalore, Cuddalore District.
 - 4.The Superintendent,
Central Prison, Cuddalore.
 - 5.The Inspector of Police,
Puthuchathiram Police Station,
Cuddalore District.
- ... Respondents

Habeas Corpus Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus to call for the records made in



HCP No.2374 of 2022

C3/D.O/32/2022 dated 04.11.2022 on the file of the second respondent herein and quash the same as illegal and direct the respondents to produce the detenu Thiru.Senthamizhmurugan, Son of Vengadapathi, aged 44 years, now confined at Central Prison, Cuddalore before this Court and set him at liberty.

For Petitioner	..	Mr.R.Sankarasubbu Assisted by Mr.A.Ramesh
For Respondents	..	Mr.R.Muniyapparaj Additional Public Prosecutor Assisted by Mr.Sylvester John

ORDER

[Order of the Court was made by M.SUNDAR, J.]

Captioned 'Habeas Corpus Petition' [hereinafter 'HCP' for the sake of brevity] has been filed by the spouse of a detenu assailing a 'detention order dated 04.11.2022 bearing reference C3/D.O/32/2022' [hereinafter 'impugned detention order' for the sake of brevity and convenience] made by the 'jurisdictional District Collector and District Magistrate i.e., second respondent' [hereinafter 'detaining authority' for the sake of convenience]. In and by the impugned detention order the detenu has been branded as 'Goonda' within the meaning of Section 2(f) of 'The Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug-offenders, Forest-offenders, Goondas, Immoral Traffic Offenders Slum grabbers and Video Priates Act, 1982 (Tamil Nadu Act 14 of 1982)' [hereinafter 'Act 14 of 1982' for the sake



HCP No.2374 of 2022

of convenience]. The detenu was arrested in cases [cited as adverse and the ground cases in the impugned detention order] on 23.10.2022.

2.Suffice to say that the ground case is Crime No.467 of 2022 for alleged offences under Sections 447, 395 read with Section 397 of the Indian Penal Code (45 of 1860) [hereinafter 'IPC' for the sake of brevity] on the file of Puthuchathiram Police Station [Cuddalore District]. There is one adverse case and the same is Crime No.392 of 2022 for alleged offences under Sections 454 and 380 IPC which is also on the file of the same Police Station, namely, Puthuchathiram Police Station.

3.Mr.R.Sankarasubbu, learned counsel for petitioner assisted by Mr.A.Ramesh for petitioner and Mr.R.Muniyapparaj, learned Additional Public Prosecutor assisted by Mr.Sylvester John for respondents are before us.

4.Notwithstanding several averments and grounds in the support affidavit qua the captioned HCP in the hearing before us, learned counsel for petitioner in his campaign against the impugned detention order raised the



following points:

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- i. The Advisory Board met on 16.12.2022 at 1.00 p.m. but the notice for this hearing was served on the detenu in the Prison barely 24 hours earlier i.e., on 15.12.2022 at 12.30 p.m. This has hampered the rights of the detenu qua prosecuting his case before the Advisory Board.
- ii. The detenu was remanded in the adverse case as well as the ground case. In the 'grounds of detention order supplied to the detenu in the form of a booklet' [hereinafter 'said booklet' for the sake of convenience] though the remand requisitions have been provided at Page No.29 [adverse case] and Page No.70 [ground case] the remand orders have not been provided. This has caused infraction of petitioner's rights to make an effective representation against impugned detention order.
- iii. The Form of order for detention and custody of an accused person under Section 57 of The Code of Criminal Procedure, 1973 (2 of 1974) [hereinafter 'Cr.P.C.' for the sake of convenience] has been given in the said booklet at Page No.72 but a Tamil translation of the same has not been provided. It is submitted that the literacy level of the detenu is 10th Standard in School, he is conversant in mother tongue Tamil only and therefore this has hampered his right to make an effective representation against the



impugned detention order.

- iv. As regards imminent possibility of detenu being enlarged on bail only the ground case has been considered and the adverse case has not been considered though the detenu has been remanded in both the cases. Therefore, the impugned detention order is hit by the vice of non application of mind.

5. In response to the aforementioned points canvassed and exhorted by learned counsel for petitioner in the hearing, learned Additional Public Prosecutor made submissions, a summation of which is as follows:

- (i) The Advisory Board was originally convened on 09.12.2022 but the detenu could not be produced before Advisory Board that day owing to inclement weather and heavy rains. 16.12.2022 is only an adjourned date and therefore it cannot be said that the accused was not given adequate time.
- (ii) The remand reports in the adverse case and the ground case itself indicate that there was a remand and a perusal of the remand requisition itself will show that there is a remand and therefore non-production of remand orders does not cause any prejudice to the detenu.
- (iii) Tamil translation of Section 57 Cr.P.C. Form has not



HCP No.2374 of 2022

hampered the rights of the detenu as the substantial portion of this Form is in Tamil.

(iv)The consideration of possibility of detenu being enlarged on bail in ground case will suffice as if there is a possibility of enlargement on bail in the ground case it follows that there is a possibility of enlargement in bail in the adverse case also as the adverse case is a less serious offence.

6.We now proceed to set out our discussion and also give our dispositive reasoning qua the aforementioned points one after the other in the sequence in which they were canvassed/countered before us.

7.As regards production before Advisory Board, we have no difficulty in coming to the conclusion that it is a very important step in preventive detention as a conjoint reading of Sections 3, 9, 10 make it clear that when a detaining authority makes a preventive detention order, it has to go before the Government within 12 days, on approval by the Government it would continue for three months but further detention will depend on the report of the Advisory Board and the action upon report of the Advisory Board within the meaning of Section 12 of Act 14 of 1982. This legal course is statutorily



HCP No.2374 of 2022

imperative precondition for full/maximum 12 months detention as would be evident from a plain reading of Section 13 of Act 14 of 1982. In the case on hand, the detention order is dated 04.11.2022, the detenu was already in detention on that day and State is now campaigning for full twelve months detention as the learned Additional Public Prosecutor is stoutly defending the impugned detention order and is advancing submissions in an effort to persuade us to sustain the impugned detention order. In this view of the matter, the production before the Advisory Board assumes enormous significance. In support of his contention, learned counsel for petitioner pressed into service the celebrated case of A.K.Roy case law i.e., ***A.K.Roy vs. Union of India and others*** reported in ***1982 (1) SCC 271*** which also on facts arises out of preventive detention albeit under National Security Act. Learned counsel for petitioner laid emphasis on two paragraphs, namely, paragraph Nos.100 and 110, which read as follows:

100. Another aspect of this matter which needs to be mentioned is that the embargo on the appearance of legal practitioner should not be extended so as to prevent the detenu from being aided or assisted by a friend who, in truth and substance, is not a legal practitioner. Every person whose interests are adversely affected as a result of the proceedings.



WEB COPY



HCP No.2374 of 2022

which have a serious import, is entitled to be heard in those proceedings and be assisted by a friend. A detenu, taken straight from his cell to the Board's room, may lack the ease and composure to present his point of view. He may be "tongue-tied, nervous, confused or wanting in intelligence". (see Pett v. Greyhound Racing Association Ltd.) (1969) 1 QB 125, and if justice to be done, he must at least have the help of a friend who can assist him to give coherence to his stray and wandering ideas. Incarceration makes a man and his thoughts dishevelled. Just as a person who is dumb is entitled, as he must, to be represented by a person who has speech, even so, a person who finds himself unable to present his own case is entitled to take the aid and advice of a person who is better situated to appreciate the facts of the case and the language of the law. It may be that denial of legal representation is not denial of natural justice per se, and therefore, if a statute excludes that facility expressly, it would not be open to the tribunal to allow it. Fairness, as said by Lord Denning M.R., in *Maynard v. Osmond* (1977) 1 QB 240, 253, can be obtained without legal representation. But, it is not fair, and the statute does not exclude that right, that the detenu should not even be allowed to take the aid of a friend. Whenever demanded, the Advisory Boards must grant that facility.

110. The last of the three rights for which Shri Jethmalani contends is the right of the detenu to lead



WEB COPY



HCP No.2374 of 2022

evidence in rebuttal before the Advisory Board. We do not see any objection to this right being granted to the detenu. Neither the Constitution nor the National Security Act contains any provision denying to the detenu the right to present his own evidence in rebuttal of the allegations made against him. The detenu may therefore offer oral and documentary evidence before the Advisory Board in order to rebut the allegations which are made against him. We would only like to add that if the detenu desires to examine any witnesses, he shall have to keep them present at the appointed time and no obligation can be cast on the Advisory Board to summon them. The Advisory Board, like any other tribunal, is free to regulate its own procedure within the constraints of the Constitution and the statute. It would be open to it, in the exercise of that power, to limit the time within which the detenu must complete his evidence. We consider it necessary to make this observation particularly in view of the fact that the Advisory Board is under an obligation under section 11(1) of the Act to submit its report to the appropriate Government within seven weeks from the date of detention of the person concerned. The proceedings before the Advisory Board have therefore to be completed with the utmost expedition.'

(Underlining made by us for ease of reference)

Adverting to the aforementioned paragraphs, learned counsel submitted that there are two facets to the matter. It was submitted that the



HCP No.2374 of 2022

first facet is when a detenu is taken straight from his Cell to the Board room, he may lack ease and composure to present his point of view, he may be 'tongue-tied' or confused or wanting in intelligence and case in hand is one of being taken straight from Cell. It was further submitted that the second facet is when a detenu has an inalienable right to be represented by a friend or to have an assistance of a friend or relative and this barely 24 hours notice has impaired the possibility of getting effective assistance.

8.The submission of learned Additional Public Prosecutor that the Advisory Board was earlier convened on 09.12.2022 and therefore the detenu had advance knowledge does not find favour with us. The reason is, it is not a question of the detenu being aware that he has to go before the Advisory Board and if that is the yardstick, the detenu on the date of being clamped with detention order itself may be aware that he will be taken to the Advisory Board one day or the other. Therefore, this can hardly be a ground to say that the detenu had to earlier go before the Advisory Board on 09.12.2022, it did not happen owing to inclement weather and heavy rain and therefore there was adequate time. The point to be tested is how much time was available to the detenu qua the date on which he was actually taken



HCP No.2374 of 2022

before the Advisory Board and as to whether he was directly taken from the

Cell with very little or no reaction/preparatory time from the date and time of notice of hearing wherein it was quite possible that the detenu was therefore lacking ease and composure to present his point of view. We have no difficulty in coming to the conclusion that in the case on hand, the detenu was taken directly from the Cell at a very short notice with little/no reaction time much less time for preparing himself and therefore the theory that he lacked ease and composure to present his point of view and also take the assistance of friend/relative (which are inalienable constitutional safeguards qua preventive detention jurisprudence) is acceptable.

The sequitur is, first point enures to the benefit of the detenu in his campaign against the impugned detention order. Though this itself is good enough to dislodge the impugned detention order, we deem it appropriate to consider the other three points also.

9.This takes us to the next point i.e., remand orders in the adverse case and the ground case not being given to the detenu. The argument of the learned Additional Public Prosecutor that the remand requisitions or remand



HCP No.2374 of 2022

reports at Page No.29 [adverse case] and Page No.70 [ground case] itself will suffice is not convincing as the remand requisition or remand report is made by the prosecution requesting for remand. Ultimately, the remand may or may not be acceded to. It may be acceded to for entire period sought for by the Police or it may be for a lesser period also. There may be certain observations also in the remand order. All these are so important that the detenu who is clamped with the preventive detention order is entitled to know the contents of the remand order. In this case, we find that in the Detention Form under Section 57 Cr.P.C. there is a mention about the medical attention to be given to the detenu on the ground that he is diabetic, it means that it is quite possible that something is transpired at the time of remand. All this turns on the detenu's constitutional right to make effective representation qua the impugned detention order. This constitutional safeguard is ingrained in Clause (5) of Article 22 of the Constitution of India and any impairment of the same will lead to vitiating the impugned preventive detention order. Therefore, as regards second point, we have no difficulty in coming to the conclusion that the constitutional safeguard ingrained in Article 22(5) of the Constitution of India has been violated and therefore, the impugned detention order is vitiated or the impugned detention



HCP No.2374 of 2022

order falls foul of the constitutional safeguard.

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10.This takes us to the third point which turns on Tamil translation. As this is a fact situation, learned Additional Public Prosecutor has very little to say on this aspect of the matter. Be that as it may, learned counsel for petitioner pressed into service the case of *Powanammal vs. State of Tamil Nadu and another* reported in *[1999] 2 SCC 413* to say that Tamil translation is imperative. In *Powanammal's* case, Hon'ble Supreme Court in a preventive detention matter under Act 14 of 1982 addressed itself to the question as to whether failure to supply Tamil version of the order of remand passed in English, a language not known to the detenu would vitiate further detention. Hon'ble Supreme Court answered this question by saying that non-supply of a Tamil version of English document renders the continued detention illegal. In this regard, Hon'ble Supreme Court in *Powanammal's* case gave an exposition of Article 22(5) of the Constitution of India and held that it imposes twin obligations on the authority making the order of detention and the twin obligations are (a) to communicate to such person the grounds on which the order of detention has been made and (b) to afford him the earliest opportunity of making a representation against the order.



After setting out its expression on this twin obligations under Article 22(5) of the Constitution of India, Hon'ble Supreme Court laid down the principle that not providing the detenu with copies of remand order in a language known to the detenu [when the remand order is made in a language which the detenu is not conversant with] certainly impairs the obligations under Article 22(5) of the Constitution of India. As already alluded to supra, Hon'ble Supreme Court addressed itself to this question which is set out in paragraph No.6 and answered the same in paragraph No.16. The discussion and dispositive reasoning is contained in paragraph Nos.7 to 15. Therefore, we deem it appropriate to extract paragraph Nos.6 to 16 [both paragraphs inclusive] of Powanammal's case and the same 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.

7.The contention of Mr Mani is founded on clause 5 of Article 22 of the Constitution of India which reads thus:

“22. (5) When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against



WEB COPY



HCP No.2374 of 2022

the order.”

It imposes twin obligations on the authority making the order of detention in respect of a person. They are: (1) to communicate to such person the grounds on which the order of detention has been made and (2) to afford him the earliest opportunity of making a representation against the order.

8.The law relating to preventive detention has been crystallized and the principles are well-nigh settled. The amplitude of the safeguard embodied in Article 22(5) extends not merely to oral explanation of the grounds of detention and the material in support thereof in the language understood by the detenu but also to supplying their translation in script or language which is understandable to the detenu. Failure to do so would amount to denial of the right of being communicated the grounds and of being afforded the opportunity of making a representation against the order. (See Hadibandhu Das v. District Magistrate, Cuttack [AIR 1969 SC 43 : (1969) 1 SCR 227] .)

9.However, this Court has maintained a distinction between a document which has been relied upon by the detaining authority in the grounds of detention and a document which finds a mere reference in the grounds of detention. Whereas the non-supply of a copy of the document relied upon in the grounds of detention has been held to be fatal to continued detention, the detenu need not show that any prejudice is caused to him. This is because the non-supply of



such a document would amount to denial of the right of being communicated the grounds and of being afforded the opportunity of making an effective representation against the order. But it would not be so where the document merely finds a reference in the order of detention or among the grounds thereof. In such a case, the detenu's complaint of non-supply of document has to be supported by prejudice caused to him in making an effective representation. What applies to a document would equally apply to furnishing a translated copy of the document in the language known to and understood by the detenu, should the document be in a different language.

10. In Chaju Ram v. State of J&K [(1970) 1 SCC 536] the order of detention was challenged on the ground, inter alia, that the detenu was not explained the grounds of his detention in the language known to him and, therefore, he was deprived of his right of making a representation. This Court held that when dealing with a detenu who could not read and understand English or any language at all, the grounds of detention should be explained to him as early as possible in the language he understood so that he could avail himself of the statutory right of making a representation. The contention that the document in English was handed over to the detenu who affixed his thumb in token of having received it was held not in compliance with the requirement of law which gave a very valuable right to the detenu to make a representation which right was frustrated by handing over to him the grounds of detention in an alien



language. The above decision is not an authority for supporting the contention canvassed by Mr Natarajan that explaining the contents of the document, relied upon in the grounds of detention, in the language understood by the detenu, absolves the detaining authority of the duty to furnish a translation of such document in the language understood by the detenu.

11.The judgment of this Court in *L.M.S. Ummu Saleema v. B.B. Gujaral* [(1981) 3 SCC 317 : 1981 SCC (Cri) 720] also does not help the respondents because that case dealt with supply of documents and materials which find a casual or passing reference in the course of narration of facts in the grounds of detention but are not relied upon by the detaining authorities in making the order of detention. We have already held above that not furnishing copies of such documents would not vitiate the order unless the detenu shows that he was prejudiced in making an effective representation due to the non-supply of such documents.

12.Here it will be appropriate to refer to the following decisions:

In *Prakash Chandra Mehta v. Commr. and Secy., Govt. of Kerala* [1985 Supp SCC 144 : 1985 SCC (Cri) 332 : AIR 1986 SC 687] the order of detention was passed under Section 3 of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974. The grievance of the detenu was that the grounds of detention were served in English and that the annexures to the grounds were in Malayalam and that he



could understand only Gujarati; so he pleaded that his continued detention was bad. It was held that it was imperative that the grounds must be communicated in a language understood by the person concerned so that he could make an effective representation. It was pointed out that the plea that he did not know anything except Gujarati was merely the ipse dixit of the detenu and that the detaining authority came to the conclusion that he knew both Hindi and English and so averred in his affidavit and the detenu was merely feigning ignorance of English. On those facts, it was held that communication of the grounds of detention in English and subsequently in Hindi was valid and that as the gist of the annexures, which were in Malayalam, had been stated in the grounds of detention, so the detention was not vitiated. In the instant case, there is no such finding of the detaining authority about the detenu not knowing English. Mentioning about the order of remand in the grounds, in our view, does not amount to giving the gist of that document.

13. In Madan Lal Anand v. Union of India [(1990) 1 SCC 81 : 1990 SCC (Cri) 51 : AIR 1990 SC 176] one of the grounds of challenge to the order of detention was the non-supply of copies of documents. The detaining authority relied upon three civil miscellaneous applications filed in a civil revision petition. Copies of the miscellaneous petitions were supplied to the detenu but the copy of the civil revision petition in which the miscellaneous petitions were filed, was not furnished. It was



observed that mentioning of a civil revision petition in the grounds of detention was merely to identify the miscellaneous applications and having regard to the facts and circumstances of that case, the detenu was not prejudiced due to non-supply of the copies of the documents to him and further, the other revision petitions, copies of which were not supplied, were mentioned to point out the fact of shifting of the factory premises without giving any specific address of the factory and that fact in the grounds of detention did not necessarily require the detaining authority to supply copies of the revision petitions. On those facts, it was held that the non-supply of the document did not cause any prejudice to him. This case falls in the aforementioned second category of documents.

14.Kamarunnissa v. Union of India [(1991) 1 SCC 128 : 1991 SCC (Cri) 88 : AIR 1991 SC 1640] was also a case arising under Section 3 of the COFEPOSA Act. There the documents that were not supplied to the detenu were merely referred to in the grounds of detention and were not relied upon by the detaining authority while arriving at the subjective satisfaction. The observation of the Court that a mere statement that the documents were not supplied was not sufficient and that the detenu must show that non-supply of documents has impaired his right to make a representation, has to be understood having regard to the fact that the documents therein were merely referred to in the grounds of detention but were not relied upon by the detaining authority for reaching subjective



satisfaction.

15. Adverting to the facts of this case, the appellant has made a representation for supply of the Tamil version of the copy of the order of remand and specifically stated that the detenue could not understand the English language. Admittedly, the Tamil version of the order of remand was not furnished to her. A perusal of the grounds shows that the order of remand was relied upon by the second respondent to reach subjective satisfaction, so the detenue need not show that any prejudice was caused to her due to the non-supply of the Tamil version of the order of remand. Therefore, the High Court is not correct in holding that the non-furnishing of the copy of the order of remand would not in any way prejudice the detenue.

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.'

(Underlining made by this Court for ease of reference)

11. The argument that substantial parts of Detention Form itself is in Tamil is hardly an answer as it is a remand order which is all too critical. It was also submitted that the detenu is worldly wise and he can even represent his case in English. It is not a question of being worldly wise or wisdom one



HCP No.2374 of 2022

possesses but it is a question of literacy level when it comes to reading and understanding a document in a particular language. In the case on hand, there is no dispute, contestation or disagreement that the literacy level of the detenu is only 10th Standard in School. Therefore, we have no hesitation in saying that not furnishing Tamil translation of the Detention Form under Section 57 Cr.P.C. at Page No.74 is definitely lethal qua the impugned detention order.

12.This takes us to the last point which turns on the detaining authority considering only the ground case and not considering the adverse case for arriving at the subjective satisfaction of the imminent possibility of the detenu being enlarged on bail. There is no dispute that a reading of the impugned detention order makes it clear that only the ground case has been considered for arriving at subjective satisfaction that there is imminent possibility of the detenu being enlarged on bail. The argument that the adverse case is a lesser offence and therefore, it will suffice if imminent possibility is tested with regard to the ground case alone does not weigh with us because the possibility of being enlarged on bail has to be tested on a case to case basis and in preventive detention jurisprudence, subjective



satisfaction is an important determinant and the same should be arrived at on sound reasoning. We make it clear that this point has to be tested on a case to case basis and in the case on hand we find the reasoning doubtful and suspect. In this regard, two case laws pressed into service by the learned counsel for the petitioner certainly come to the aid of the petitioner. One is *Dharmar vs. State of Tamil Nadu and others* decided on 08.02.1995 reported in *MANU/TN/1007/1995* and the other is *Kanniappan vs. District Magistrate and District Collector and others* decided on 31.03.2000 reported in *MANU/TN/0660/2000*. To be noted, both *Dharmar* and *Kanniappan* cases have been rendered by Hon'ble Division Benches of this Court. It is also to be noted that both these cases arose under Act 14 of 1982.

13.In *Dharmar's* case, the relevant paragraph is paragraph No.8 and the same reads as follows:

'8.It is thus clear that the second respondent-Detaining Authority had not at all adverted to the factum of the detenu being lodged in prison as a remand prisoner in a serious offence of murder covered by adverse case



No.2, while considering the imminent possibility of his coming out on bail and his further indulging in prejudicial activities affecting the maintenance of public order.'

In **Kanniappan's** case, the relevant portion is contained in paragraph No.2 and that portion of paragraph No.2 which is relevant reads as follows:

'2.....The ground case in that decided judgment was registered for the offences punishable under Sections 341, 342, 427 and 506-511 of the IPC. Going by the offences registered in the adverse cases as well as in the ground case, the learned Judges in that case went on to hold that the detaining authority should not only apply his mind to the facts available with reference to the ground case but also with reference to the facts available in the second adverse case, since the second adverse case in that case disclosed an offence of 302, IPC and when compared, the offence registered in the ground case were only minor in nature. We extract here under the conclusion of the learned Judge in that judgment:

8.It is thus clear that the second respondent-detaining authority had not at all adverted to the factum of the detenu being lodged in prison as a remand prisoner in a serious offence of murder covered by adverse case No. 2, while considering the imminent possibility of his coming out on



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HCP No.2374 of 2022

bail and his further indulging in prejudicial activities affecting the maintenance of public order.

9. In such state of affairs, we are of the opinion that there was utter non-application of mind on the part of the second respondent-detaining authority as regards the imminent possibility of the detenu coming out on bail and further indulging in prejudicial activities affecting the maintenance of public order. In this view of the matter, as rightly contended by learned counsel for the petitioner, the impugned order of detention is liable to be set aside and the same is accordingly set aside. The detenu is therefore ordered to be set at liberty forthwith unless and until he is required to be detained in connection with any other case. The HCP Is thus allowed.'

A careful perusal of the aforementioned case laws makes it clear that the detaining authority considering only the ground case for arriving at the subjective satisfaction of imminent possibility of the detenu being enlarged on bail and not considering the adverse case certainly is lethal to the impugned detention order in the case on hand owing to facts and circumstances of the case and considering the adverse and ground cases in the captioned matter. We once again emphasize that this point has to be



HCP No.2374 of 2022

tested on a cases to case basis. The impugned detention order is afflicted by non-consideration of the adverse case for arriving at subjective satisfaction and therefore, we find that this point also enures to the benefit of the detenu. The argument that the adverse case is a lesser offence is no argument for reasons which have been delineated supra.

14. In the light of discussion and dispositive reasoning thus for all four points canvassed by learned counsel for petitioner find favour with us, the sequitur is, the impugned detention order will be set aside.

15. Be that as it may, before writing the operative portion of this order, we deem it appropriate to refer to one important aspect of preventive detention which was canvassed by learned counsel for petitioner. Learned counsel for petitioner placing reliance on the *Salem Advocate Bar Association, T.N. vs. Union of India* reported in [2005] 6 SCC 344 which is a oft-quoted celebrated landmark judgment and submitted that a Three Member Bench of Hon'ble Supreme Court had opined that a Writ of Habeas Corpus shall invariably be disposed of within a period of fifteen days and it shall have preference over and above the fast track cases. This is articulated



at Page No.400 of the SCC report of **Salem Bar Association** case and the relevant portion reads as follows:

II. Writ of Habeas Corpus :

Notices in respect of Writ of Habeas Corpus where the person is in custody under orders of a State Government or Central Government shall invariably be issued by the Court at the first listing and shall be made returnable within 48 hours. State Government or Central Government may file a brief return enclosing the relevant documents to justify the detention. The matter shall be listed after notice on the fourth working day after issuance of notice, and the Court shall consider whether a more detailed return to the Writ is necessary, and, if so required, shall give further time of a week and three days' time for filing a rejoinder. A Writ of Habeas Corpus shall invariably be disposed of within a period of fifteen days. It shall have preference over and above fast-track cases.

[Underlining made by us for ease of reference.]

16.As regards the above aspect of the matter, we also remind ourselves of another celebrated case, namely, **A.K.Gopalan vs. The District Magistrate and another** reported in **1949 CriLJ 843**, wherein Hon'ble



HCP No.2374 of 2022

Division Bench of this Court held that Habeas Corpus Petitions are high prerogative writs. Therefore, the principle laid down in A.K.Gopalan's case i.e., the articulation by Hon'ble Division Bench of this Court read in conjunction with Salem Advocate Bar Association case (relevant portion is extracted and reproduced supra) make it clear that Habeas Corpus Petitions are high prerogative writs. This takes us to rules which govern proceedings under Article 226 in this Court. The present set of rules are 'Madras High Court Writ Rules, 2021' which came into force on and from 30.06.2021 [hereinafter 'MHC Writ Rules' for convenience]. In MHC Writ Rules, Rule 17 captioned 'Posting of Writ Petitions', vide Rule 17(1)(ii) says that Habeas Corpus Petitions may be posted before a Division Bench. This is unlike other writs such as Mandamus, Certiorari, Prohibition and Declaration which are listed before Hon'ble Single Judges. Therefore 'MHC Writ Rules' recognizes a distinction between Habeas Corpus writs and other writs. However, Rule 19 captioned 'Admission' reads as follows:

'19.Admission:- (1) Upon categorization, Writ Petitions shall be posted before Court, as per the roster assigned by the Hon'ble Chief Justice from time to time, for admission, along with Writ Miscellaneous Petitions, if any, for filing single Writ Petition, dispensing with



HCP No.2374 of 2022

production of original impugned order and for other interim reliefs.

(2) The Court may, upon hearing the petitioner or his Advocate, admit the Writ Petition, issue rule nisi or order notice of motion and pass such interim order as it may deem necessary, or dismiss the Writ Petition.

(3) Rule nisi may be returnable by 4 weeks or earlier if so ordered by the Court.

Sub-rule (3) says that Rule nisi may be returnable by four weeks but here there is no distinction between the Habeas Corpus writs and other four categories of writs. We are fortified by this observation as Hon'ble Supreme Court in Salem Advocate Bar Association case in paragraph No.69 has expressed a hope that Rules of High Courts in the Country may require a re-look. We are conscious that this observation is in the context of IPC amendments but the principle is the same. A re-look may even be by way of classifying 'may' phenomenon in Sub-rule (3) of Rule 19 or in any other suitable manner. We propose to observe that the Registry shall place this matter before the Hon'ble The Acting Chief Justice for reference to the Hon'ble Rules Committee of this Court. To be noted that would be by way of a post script to this order.



HCP No.2374 of 2022

17.Now, we drop the curtains on the captioned matter by writing the operative portion of the order.

18.Ergo, the sequitur is, captioned HCP is allowed and the detention order dated 04.11.2022 bearing reference C3.D.O./32/2022 made by the second respondent is set aside and the detenu Thiru.Senthamizhmurugan, aged 44 years, son of Thiru.Vengadapathi is directed to be set at liberty forthwith unless required in connection with any other case. There shall be no order as to costs.

(M.S,J.) (M.N.K.,J.)
23.02.2023

Index:Yes/No
Neutral Citation : Yes/No
cse

P.S.I:

(i) Registry to forthwith communicate this order to Jail authorities in Central Prison, Cuddalore.

P.S.II:

(i) Registry to place this matter before the Hon'ble The Acting Chief Justice regarding our observations/suggestions to refer the matter to



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HCP No.2374 of 2022

Hon'ble Rules Committee for a re-look at Madras High Court Writ Rules, 2021 which came into force on 30.06.2021 as regards Habeas Corpus Petitions.

(ii) Registry is directed to place this matter before the Hon'ble The Acting Chief Justice along with the following:

(a) This order of us highlighting relevant portion.

(b) A.K.Gopalan vs. The District Magistrate and another [dated 18.11.1948] reported in 1949 CriLJ 843 wherein Habeas Corpus has been categorized as high prerogative writ.

(c) Salem Advocate Bar Association vs. Union of India reported in [2005] 6 SCC 344 relevant portions being in Page Nos.400 and 403.



HCP No.2374 of 2022

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- 1.The Secretary,
Department of Home, Prohibition & Excise
Fort St. George, Chennai – 600 009.
- 2.The District Collector and District Magistrate,
Cuddalore, Cuddalore District.
- 3.The Superintendent of Police,
Cuddalore, Cuddalore District.
- 4.The Superintendent,
Central Prison, Cuddalore.
- 5.The Inspector of Police,
Puthuchathiram Police Station,
Cuddalore District.
- 6.The Public Prosecutor,
High Court of Madras,
Chennai - 104.



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HCP No.2374 of 2022

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

cse

H.C.P.No.2374 of 2022

23.02.2023