



H.C.P.No.2420 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.04.2023

CORAM

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

H.C.P.No.2420 of 2022

Amutha

.. Petitioner

Vs

- 1.The State of Tamil Nadu rep. By its
Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George, Secretariat, Chennai – 600 009.
 - 2.The District Collector and District Magistrate
of Vellore District, Vellore.
 - 3.The Superintendent of Police,
Vellore District, Vellore.
 - 4.The Superintendent of Prison,
Central Prison, Vellore, Vellore District.
 - 5.The Inspector of Police,
Gudiyatham Taluk Police Station,
Vellore 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
in connection with the order of detention passed by the second

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respondent dated 25.10.2022 in his office Ref.C3.D.O.No.103/2022 against the petitioner's husband by name Thiru.Karthi, S/o.Venkatesan, aged about 40 years, now confined at Central Prison, Vellore, Vellore District and set aside the same and direct the respondents to produce the above said detenu before this Court and set him at liberty.

For Petitioner : Ms.S.Priyadharshini
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 the wife of the detenu assailing a 'preventive detention order dated 25.10.2022 bearing reference C3/D.O.No.103/2022' [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 detaining authority as impugned detention order has been made by second respondent.

2. Impugned detention order has been made under 'The Tamil



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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 'Bootlegger' within the meaning of Section 2(b) of Act 14 of 1982.

3. There are four adverse cases. The ground case which is the sole substratum of the impugned detention order is Crime No.248 of 2022 on the file of Gudiyatham Taluk Police Station 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. Ms.S.Priyadharshini, learned counsel on record for petitioner and Mr.R.Muniyapparaj, learned State Additional Public Prosecutor



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

5. Though several grounds have been raised in the support affidavit, learned counsel for petitioner in the arguments at the time of hearing pivoted his campaign against the impugned detention order on one point and that one point turns on incorrect/improper translation. Learned counsel adverting to pages 58 and 59 of the grounds booklet submits that the remand order dated 06.10.2022 has not been correctly translated while in the remand order in English, learned Magistrate has clearly mentioned that the right of free legal aid was explained to the arrestee but in the translation, it has not been captured, in other words, in translation, that the free legal aid right was explained to the arrestee has not been mentioned. We find from the confession statement at page No.41 of the grounds booklet that the literacy level of the detenu is only third standard in school and he is a school drop out.

6. In this view of the matter, we find that flaw in the translation is very serious and it certainly affects the rights of the



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detenu to make an effective representation which are rights and constitutional safeguard enshrined in Article 22(5) of the Constitution of India. We remind ourselves of *Powanammal* case which also on facts arose out of the preventive detention case. In *Powanammal* case in similar circumstances i.e., similar fact situation, Honourable Supreme Court addressed to itself the issue of providing a detenu with translated copies in a language in which the detenu is conversant with and answered the same interalia by saying that it is imperative and not providing translated copy in a language which the detenu is conversant with vitiates preventive detention. *Powanammal* case i.e., **Powanammal Vs. State of Tamil Nadu** is reported in **(1999) 2 SCC 413** and the relevant paragraphs wherein the question which the Honourable Supreme Court addressed to itself and the manner in which the question was answered are paragraphs 6 and 16 which 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



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

8. Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 25.10.2022 bearing reference C3/D.O.No.103/2022 made by the second respondent is set aside and the detenu Thiru.Karthi, aged 40 years, S/o.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.)

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Index : Yes / No

Neutral Citation : Yes / No

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

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To

- 1.The Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George, Secretariat, Chennai – 600 009.
- 2.The District Collector and District Magistrate
of Vellore District, Vellore.
- 3.The Superintendent of Police,
Vellore District, Vellore.
- 4.The Superintendent of Prison,
Central Prison, Vellore, Vellore District.
- 5.The Inspector of Police,
Gudiyatham Taluk Police Station,
Vellore District.
- 6.The Public Prosecutor
High Court, Madras.



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