



H.C.P.No.2427 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.04.2023

CORAM

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

H.C.P.No.2427 of 2022

Manammal

.. Petitioner

Vs

1.State of Tamil Nadu represented by
The Secretary to Government,
Department of Home, Prohibition and Excise,
Secretariat, Fort St. George,
Chennai – 600 009.

2.The Commissioner of Police,
Greater Chennai,
Office of the Commissioner of Police
Vepery, Chennai – 600 007.

3.The Superintendent of Police,
Central Prison-Puzhal-II,
Puzhal, Chennai.

4.The Inspector of Police,
V-5 Thirumangalam Police Station,
Chennai.

.. Respondents

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Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus calling for the records in Memo No.397/BCDFGISSSV/2022 passed by the second respondent on 31.10.2022 on the file of the second respondent and quash the same as illegal and consequently, direct the respondents to produce the petitioner's son Sundar, son of Manickam aged about 25 years before this Court who is now detained in Central Prison, Puzhal-II and set him at liberty.

For Petitioner : Mr.A.Elumalai
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 mother of detenu assailing a 'preventive detention order dated 31.10.2022 bearing reference No.397/BCDFGISSSV/2022' [hereinafter 'impugned preventive 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.



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WEB COPY 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 are three adverse cases. The ground case which is the sole substratum of the impugned detention order is Crime No.292/2022 on the file of V-5 Thirumangalam Police Station for alleged offences under Sections 341, 294(b), 323, 336, 392, 397 and 506(ii) 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.



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4.Mr.A.Elumalai, 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 proper translation copy of a document (relied on by the detaining authority) in a language which the detenu is conversant with. Elaborating on this submission, learned counsel drew our attention to pages 52 and 53 of the grounds booklet which is the Accident/Injury Report which is in English and as regards nature of injury it is mentioned as 'Simple Injury', whereas in Tamil it is mentioned as 'Grievous Injury' [கொடுங்காயம்]. We had the benefit of perusing the booklet. We also noticed that Accident/Injury Report forms part of the ground on which the impugned preventive detention order has been made.



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6.Further, we are informed that the literacy level of the detenu is 6th standard in school and he is a school drop out. We are also informed that the detenu is conversant only with Tamil. The confession statement of the detenu which is at Page 92 of the grounds booklet confirms the same and the most relevant portion as regards the literacy level of the detenu reads as follows:

'6-ம் வகுப்பு வரை படித்து அதன் பிறகு படிப்பு
வராததால் படிக்கவில்லை'

7.Learned Additional Public Prosecutor submitted to the contrary and argued that incorrect translation does not really affect the rights of the detenu.

8.We are unable to agree with the argument of learned Prosecutor considering the literacy level of the detenu. We are of the view that this certainly impairs the right of the detenu to make an effective representation. To be noted, right of detenu to make an effective representation qua the impugned preventive detention order is a constitutional safeguard ingrained



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in Clause (5) of Article 22 of the Constitution of India. We therefore have no hesitation in saying that the impugned detention order deserves to be dislodged.

9.Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 31.10.2022 bearing reference No.397/BCDFGISSSV/2022 made by the second respondent is set aside and the detenu Thiru.Sundar, male, aged 25 years, son of Thiru.Manickam 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.)
26.04.2023

Index : Yes / No
Neutral Citation : Yes / No
Speaking Order/Non-Speaking Order
cse

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



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To

- 1.The Secretary to Government,
Department of Home, Prohibition and Excise,
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- 2.The Commissioner of Police,
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Vepery, Chennai – 600 007.
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- 4.The Inspector of Police,
V-5 Thirumangalam Police Station,
Chennai.
- 5.The Public Prosecutor,
High Court, Madras.



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

cse

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