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H.C.P.No.2453 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.04.2023

CORAM

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

H.C.P.No.2453 of 2022

P.Kesavan

.. Petitioner

Vs

- 1.The State of Tamil Nadu rep. By its
Secretary to Government,
Department of Prohibition and Excise (Home),
Fort St. George, Chennai – 600 009.
- 2.The Commissioner of Police,
Tambaram City, Sholinganallur,
Chennai – 119.
- 3.The Superintendent of Police,
Central Prison, Puzhal, Chennai.
- 4.The Inspector of Police,
T-13 Kundrathur Police Station,
Chennai.

.. 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 impugned order in BCDFGISSSV No.136/2022 dated 07.09.2022 on the file of the second respondent herein and set aside the same as illegal and direct the respondents to produce the detenu

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Gopinath @ Pura Gopi, son of Kesavan, aged about 23 years, now confined at Central Prison, Puzhal, Chennai, before this Court and set him at liberty.

For Petitioner : Mr.P.Iyappan
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 father of the detenu assailing a 'preventive detention order dated 07.09.2022 bearing reference BCDFGISSSV No.136/2022' [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 'Drug Offender' within the meaning of Section 2(e) of Act 14 of 1982.

3. The ground case which is the sole substratum of the impugned detention order is Crime No.536 of 2022 on the file of T-5 Kundrathur Police Station for alleged offences under Sections 8(c), 20(b)(ii)(B), 29(1) of Narcotic Drugs and Psychotropic Substances Act, 1985. 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.P.Iyappan, 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 several grounds have been raised in the support affidavit, learned counsel for petitioner in the arguments at the time



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of hearing pivoted his campaign against the impugned detention order on one point and that one point turns on incorrect/improper translation. Learned counsel advertent to pages 79 and 85 of the grounds booklet submits that the remand order dated 01.08.2022 has not been correctly translated while in the remand order in English, learned Magistrate has clearly mentioned that 'No complaints against police' but in the translation, it has not been captured. We find from the confession statement at page No.37 of the grounds booklet that the literacy level of the detenu is only tenth 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 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



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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 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.



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8. Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 07.09.2022 bearing reference BCDFGISSSV No.136/2022 made by the second respondent is set aside and the detenu Thiru.Gopinath @ Pura Gopi, aged 23 years, S/o.Thiru.Kesavan, 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.)
25.04.2023

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, Puzhal, Chennai.

To

- 1.The Secretary to Government,
Department of Prohibition and Excise (Home),
Fort St. George, Chennai – 600 009.
- 2.The Commissioner of Police,
Tambaram City, Sholinganallur,
Chennai – 119.

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

4.The Inspector of Police,
T-13 Kundrathur Police Station,
Chennai.

5.The Public Prosecutor,
High Court, Madras.



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

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