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H.C.P.No.2504 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.06.2023

Coram

**THE HONOURABLE MR.JUSTICE M.SUNDAR
and
THE HONOURABLE MR.JUSTICE R.SAKTHIVEL**

H.C.P.No.2504 of 2022

C.Baskaran
S/o.Chellappan

.. Petitioner/Uncle of
the detenu

VS

- 1.The Additional Chief Secretary to the Government,
Home, Prohibition & Excise Department,
Secretariat, Chennai - 600 009.
- 2.The District Magistrate and District Collector,
Thiruvallur District, Thiruvallur.
- 3.The Superintendent of Police,
Thiruvallur District, Thiruvallur.
- 4.The Superintendent,
Central Prison, Puzhal,
Chennai - 600 066.
- 5.The Inspector of Police,
Uthukottai 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 in connection with the order of detention passed by the second respondent



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dated 11.10.2022 in No.45/BCDFGISSSV/2022 against the petitioner's brother son Karthi @ Dio Karthi M/A 23, S/o.Murali, who is confined at Central Prison, Puzhal, Chennai and to set aside the same and consequently, direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner : No appearance

For Respondents : Mr.E.Raj Thilak,
Additional Public Prosecutor

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 uncle of detenu assailing a 'preventive detention order dated 11.10.2022 bearing reference BCDFGISSSV No.45/2022' [hereinafter 'impugned preventive 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 Nadu Prevention of Dangerous Activities of Bootleggers, Cyber law offenders, Drug-offenders, Forest-offenders, Goondas, Immoral traffic



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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 one adverse case and one ground case. The ground case which constitutes substantial part of substratum of the impugned preventive detention order is Crime No.263 of 2022 on the file of Uthukottai Police Station for alleged offences under Section 302 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. Mr.E.Raj Thilak, learned State Additional Public Prosecutor for all respondents is before us.

5. In the support affidavit *qua* captioned HCP several grounds have been raised/urged. However, when the matter was taken up for



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hearing, on a perusal of the case file we find that a portion of paragraph 5 of the grounds of impugned preventive detention order reads as follows:

'5) Further his remand period was upto 29.09.2022 and extended further upto 13.10.2022.'

The remand extension order of the learned jurisdictional Magistrate has been enclosed in the grounds booklet at page 96 and a scanned reproduction of the same is as follows:

IN THE COURT OF THE DISTRICT MUNSIF CUM JUDICIAL MAGISTRATE AT UTHUKKOTTAI
Present : Thiru G.Senthambiselvan, M.L.,

SIGN HERE (96)

State Represented by
The Inspector of Police,
C1 Uthukkottai P.S., Cr.No.263/2022,
U/sec. 302, 120-B, 341, 34 IPC. ...Complainant

//Vs//

1) Karthik age 23 years S/o.Murali, No.4/38, Bajana Kol Street, Sirumani, Village, Solavaram.
2) Saravanan age 26 years S/o.Gurunathan, No.3B-C, Indira Nagar, Jeeva Nagar Second Street, Jayanthipuram, Madurai, Chelliamman Kol Street, Manthoppu, Karanodai.
3) Raghu age 26 years S/o.Bose, No.1/530, Jothi Nagar 3rd street, Padayanallur, Chennai.52. ...Accused

Remand Extension Order: 29.09.2022

A1 to A3 produced before me at 1.30 pm. through Video conference. Remand extended till 13.10.2022.

sd/xxx 29.09.2022.
District Munsif-cum Judicial Magistrate
Uthukkottai.

Head Clerk,
District Munsif-cum Judicial Magistrate
Uthukkottai.

By order/True Copy/
Examiner of Copies
District Munsif-cum
Judicial Magistrate Court,
Uthukkottai.

INSPECTOR OF POLICE
UTHUKKOTTAI CIRCLE
TIRUVALLUR DISTRICT



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6. The Tamil translation of aforementioned remand extension order dated 29.09.2022 made by learned jurisdictional Magistrate has been furnished to detenu at page 97 of the grounds booklet and a scanned reproduction of Tamil translation is as follows:

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மாவட்ட உரிமையியல் மற்றும் குற்றவியல் நீதித்துறை நடுவர், ஊத்துக்கோட்டை

முன்னிலை திருச்செந்தூர் செல்வன், எம்.எஸ்.,

காவல் ஆய்வாளர்,
பி) ஊத்துக்கோட்டை காவல் நிலையம்,
தலை எண்- 2503/2022
12030 341, 302 இ-க.ச. உ/இ 34 இ-க.ச.
-எதிராக-

—வாதி

1) கார்த்தி (அ) டிவேசு கார்த்தி, வயது-23, த/பெ. ஞாபி, எண்.4/38, பழையக் கோவில் தெரு, சிதம்பரம் கிராமம், பொன்னேரி வட்டம், திருவள்ளூர் மாவட்டம்
2) எவனாள் (எ) மதுரை சாவனாள், வயது-26, த/பெ. குருமாதல், எண்.38, C, இத்திள நகர், திவா நகர் 2வது தெரு, ஜெயந்தபுரம் மதுரை, செல்வியம்மாள் கோவில் தெரு, மாந்தோப்பு, காரணோட்டை, பொன்னேரி வட்டம், திருவள்ளூர் மாவட்டம்
3) குமார், வயது-26, த/பெ. பாஸ், எண்.-1-520, ஜோதி நகர், 2வது தெரு, பாடிமதலுர் சென்னை- 52

... குற்றவாளிகள்

காவல் நீட்டிப்பு ஆணை : 29.09.2022

எதிரிகள் எ1 முதல் எ3 வரை பிற்பகல் 01.30 மணிக்கு வீடியோ கான்பரன்ஸ் மூலம் ஆஜர் செய்யப்பட்டனர். எதிரிகளை 13.09.2022 வரை நீதிமன்ற காவல் அடைப்பு செய்து உத்தரவிடப்படுகிறது.

ஆம்/-ஒத்தது 29.09.2022
மாவட்ட உரிமையியல் மற்றும் குற்றவியல்
நீதித்துறை நடுவர், ஊத்துக்கோட்டை

//உண்மை நகல்//
//உத்தரவு//

ஆம்/-ஒத்தது
தலைமை எழுத்தர்,
மாவட்ட உரிமையியல் மற்றும் குற்றவியல்
நீதித்துறை நடுவர், ஊத்துக்கோட்டை

/ஆய்விவத்தின் தபிழாக் கம்/

உண்மை நகல்
க. சிவசுந்தரன்
INSPECTOR OF POL
UTHUKOTTA CIRCLE
TIRUNELVELI DISTRICT



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7. A careful perusal of the remand extension order made by learned jurisdictional Magistrate in English and Tamil translation of the same brings to light that the date upto which the remand was extended is completely different in the original remand order and the Tamil translation. This obviously hampers and impairs the right of the detenu to make a representation. To be noted, it is not just a representation but it is a right to make an effective representation. The right of a detenu to make an effective representation is a constitutional safeguard ingrained in Clause 5 of Article 22 of the Constitution of India. We find that this constitutional safeguard ingrained in Article 22 of the Constitution of India has been impaired in this case owing to pages 96 and 97 of the grounds booklet which have been scanned and reproduced supra. To be noted, detenu has discontinued his degree and he is conversant with Tamil only. Be that as it may, de hors literacy level different dates *qua* a remand extension order in original order in English and the translation in regional language can baffle any detenu impacting detenu's right to make an effective representation *qua* a preventive detention order. We remind ourselves that preventive detention is not a punishment and habeas corpus is a high prerogative writ. As the sacrosanct constitutional right of



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the detenu is impaired, the sequitur is impugned preventive detention order deserves to be dislodged.

Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 11.10.2022 bearing reference BCDFGISSSV No.45/2022 made by the second respondent is set aside and the detenu Thiru.Karthi @ Dio Karthi, aged 23 years, son of Thiru.Murali, 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.] [R.S.V., J.]
26.06.2023

Index : Yes

Neutral Citation : Yes

gm

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

To

- 1.The Additional Chief Secretary to the Government,
Home, Prohibition & Excise Department,
Secretariat, Chennai - 600 009.
- 2.The District Magistrate and District Collector,
Thiruvallur District, Thiruvallur.
- 3.The Superintendent of Police,
Thiruvallur District, Thiruvallur.



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**M.SUNDAR, J.
and
R.SAKTHIVEL, J.**

gm

- 4.The Superintendent,
Central Prison, Puzhal,
Chennai - 600 066.
- 5.The Inspector of Police,
Uthukottai Police Station,
Chennai.
- 6.The Public Prosecutor,
High Court, Madras.

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