



H.C.P.No.2654 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.06.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE Mr.JUSTICE R.SAKTHIVEL

H.C.P.No.2654 of 2022

P.Balachandran

.. Petitioner /
Father of the detenu

Vs.

1. State of Tamil Nadu
Rep. By its Secretary
Prohibition & Excise Dept.
Fort St.George, Chennai – 600 009
2. The District Magistrate & District Collector
Namakkal District
3. Inspector of Police
Namakkal Police Station
Namakkal Taluk
Namakkal District
4. The Superintendent of Police
Namakkal District
5. The Superintendent
Central Prison, Salem District

... 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 entire records relating to the impugned order of detention passed by the 2nd respondent in C.M.P.No.41/GOONDA/2022/M1 DATED 27.11.2022 and quash the same and consequently direct the respondents to produce the detenu Vallarasu @ Mowlesswaran, aged 23 years, son of P.Balachanran, now confined in Central Prison, Salem before this Court and set him at liberty forthwith.

For Petitioner : Mr.S.Parthasarathy
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 the father of the detenu assailing a 'preventive detention order dated 27.11.2022 bearing reference C.M.P.No.41/GOONDA/2022 (M1)' [hereinafter 'impugned detention order' for the sake of convenience and brevity]. To be noted, third 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,



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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 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.657 of 2022 on the file of Namakkal Police Station for an alleged offence under Section 302 of 'Indian Penal Code, 1860 (Act 45 of 1860)' ['IPC' for brevity]. 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.S.Parthasarathy, learned counsel on record for petitioner and Mr.E.Raj Thilak, learned State Additional Public Prosecutor for all respondents are before us.

5. In the support affidavit qua captioned HCP, several grounds have been raised but in the final hearing, Mr.S.Parthasarathy, learned counsel predicated his campaign against the impugned preventive detention order on



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one point and that one point turns on discrepancies in dates between the translated Tamil copy and the original document in two places i.e., கைது குறிப்பாணை and remand order dated 26.10.2022 made by the learned Magistrate. Elaborating on this submission, learned counsel pointed out that in the arrest memo i.e., கைது குறிப்பாணை, the date on which the police officer signed the same is shown as 26.10.2022 but the Tamil translation gives the date as 12.07.2022. Likewise in the remand order made by the learned Magistrate in English it says that Accused 1 to 4 were produced before him on 28.10.2022 but the Tamil translation says that Accused 1 to 4 were produced before the learned Magistrate on 26.10.2022.

6. Learned Prosecutor submitted to the contrary. Learned Prosecutor submitted that the arrest and remand dates are well within the knowledge of the detenu, who is a Diploma Holder, therefore, incorrect translation of arrest memo and the remand order, really does not cause any difficulty.

7. We carefully considered the matter on the basis of grounds booklet, which was placed before us. We find that the translation is



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indisputably incorrect. The detenu in the case on hand will be able to read both English and Tamil version insofar as the arrest memo and remand order are concerned as they are very terse and simple but the incorrect dates and different dates would certainly cause confusion in the minds of the detenu when it come to making an effective representation. We find that the remand order is a legal document and therefore it is imperative that the detenu is given the correct dates so as to enable him to make an effective representation.

8. Right of a detenu to make an effective representation qua a impugned preventive detention order is a very sanctus right ingrained in Article 22(5) of Constitution of India. If this right is impaired, the sequitur is impugned preventive detention order deserves to be dislodged.

9. In the case on hand as we have no difficulty in saying that the detenu's right to make an effective representation has been impaired, the sequitur is, impugned preventive detention order deserves to be dislodged.



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10. Apropos, captioned HCP is allowed. Impugned detention order dated 27.11.2022 bearing reference C.M.P.No.41/GOONDA/2022 (M1) made by the second respondent is set aside and the detenu Thiru.Vallarasu alias Mowleeswaran, son of Balachandran 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.)

14.06.2023

Index : Yes

Speaking order

Neutral Citation : Yes

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



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To

WEB COPY

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Namakkal District
3. Inspector of Police
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5. The Superintendent
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6. The Public Prosecutor
Madras High Court, Chennai



WEB COPY



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