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H.C.P.No.2642 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.06.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN
THILAKAVADI

H.C.P.No.2642 of 2022

Arivozhi

W/o.Enikkumsettu

.. Petitioner/wife of Detenu

Vs.

1.The Principal Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai - 600 009.

2.The District Collector / District Magistrate,
Ariyalur District,
Ariyalur.

3.The Superintendent of Police,
Ariyalur District,
Ariyalur.

4.The Superintendent of Prison,
Central Prison,
Trichy.



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5. The Inspector of Police,
Prohibition and Enforcement Wing,
Ariyalur 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 pertaining to the impugned detention order passed by the 2nd respondent vide his proceedings in Detention Order No.Cr.M.P.No.38/2022 dated 25.11.2022, quash the same and produce the person or body of the detenu, namely, Enikkumsettu, son of Kanthasamy, aged about 34 years presently confined at Central Prison, Trichy before this Court and set him at liberty.

For Petitioner : Mr.V.Illanchezian

For Respondents : Mr.R.Muniyapparaj
Additional Public Prosecutor
assisted by
Mr.M.Sylvester John, Advocate

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 wife of detenu assailing a 'preventive detention order dated 25.11.2022 bearing reference Cr.M.P.No.38/2022' [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



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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 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 is no adverse case. The ground case which is the sole substratum of the impugned detention order is Crime No.764 of 2022 on the file of Prohibition Enforcement Wing, Ariyalur for alleged offences under Sections 4(1)(aa) r/w 4(1-A) of the Tamil Nadu Prohibition Act, 1937 and Sections 420, 465, 468, 471 and 272 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.V.Illanchezian, learned counsel 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 correct translated copy of a document (relied on by the detaining authority) in a language which the detenu is conversant with. Elaborating on the submission, learned counsel drew our attention to page Nos.32 and 33 of the grounds booklet which is the Arrest Intimation Form. No Tamil translation of this form has been furnished to the detenu. We had the benefit of perusing the grounds booklet. We also noticed that the Arrest Intimation Form forms part of the ground on which the impugned detention order has been made. As this turns on obtaining scenario which comes to light from the booklet which is before us, learned State Additional Public Prosecutor does not have much of a say.

6. Be that as it may, we are informed that the literacy level of the detenu is 8th standard in school and he is a school drop out. We are also



informed that the detenu is conversant only with Tamil. We remind ourselves of Powanammal case i.e., **Powanammal Vs. State of Tamil Nadu**, wherein Hon'ble Supreme Court addressed itself to this translation point in a similar fact situation. The question which the Hon'ble Supreme Court addressed itself to is captured in paragraph 6 and the manner in which a Hon'ble Bench of the Supreme Court answered this question is captured in paragraph 16. To be noted, Powanammal case is reported in **(1999) 2 SCC 413** and paragraphs 6 and 16 {as in SCC journal} 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. We find that the aforementioned **Powanammal** case applies in all fours to the case on hand as we find that Arrest Intimation Form which has been relied on as part of the grounds of detention qua impugned



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detention order is a crucial form and not furnishing the same in Tamil the lone language known to the detenu has impaired his constitutional right to make an effective representation of the impugned detention order. We therefore have no hesitation in saying that the impugned detention order deserves to be dislodged.

8. Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 25.11.2022 bearing reference Cr.M.P.No.38/2022 made by the second respondent is set aside and the detenu Thiru.Enikkumsettu, aged 34 years, son of Thiru.Kandhasamy, now detained in Central Prison, Thiruchirapalli is directed to be set at liberty forthwith unless required in connection with any other case/s. There shall be no order as to costs.

(M.S.,J.) (K.G.T.,J.)
12.06.2023
(4/4)

Index : Yes
Speaking order
Neutral Citation : Yes
rsi

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



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To

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Home, Prohibition and Excise Department,
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Ariyalur.
- 3.The Superintendent of Police,
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Central Prison,
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- 5.The Inspector of Police,
Prohibition and Enforcement Wing,
Ariyalur District.
- 6.The Public Prosecutor
High Court, Madras.



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M.SUNDAR, J.
and
K.GOVINDARAJAN THILAKAVADI, J.

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