



H.C.P.No.2681 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 01.03.2023

Coram

The Hon'ble Mr. Justice **M.SUNDAR**
and
The Hon'ble Mr. Justice **M.NIRMAL KUMAR**

H.C.P.No.2681 of 2022

Mallika
W/o.Subramaniyan

... Petitioner/Detenu's mother

-VS-

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

2.The District Collector and District Magistrate,
O/o.District Collector and District Magistrate,
Ariyalur District,
Ariyalur.

3.The Superintendent,
Central Prison,
Tiruchirappalli.

4.The Superintendent of Police,
O/o.Superintendent of Police,
Ariyalur District.

5.The Inspector of Police,
Ariyalur Police Circle,
Ariyalur District.

... Respondents



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Prayer: Habeas Corpus Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus calling for the entire records relating to the impugned order of detention passed by the second respondent in Cr.M.P.No.36/2022 dated 23.11.2022 and set aside the same and consequently direct the respondents to produce the detenu Ramesh, son of Subramaniam, aged about 37 years, petitioner's son now confined at Central Prison, Tiruchirappalli before this Court and set him at liberty forthwith.

For Petitioner .. Mr.S.Saravana Kumar

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 23.11.2022 bearing reference Cr.M.P.No.36/2022' (hereinafter 'impugned detention order' for the sake of convenience). To be noted, fifth respondent is the Sponsoring Authority.



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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 four adverse cases and one ground case. The ground case which is the substratum of the impugned detention order is Crime No.309/2022 on the file of Ariyalur Police Station for alleged offences under Sections 392 read with Sections 397 and 506(ii) 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.Saravana Kumar, learned counsel for petitioner and Mr.R.Muniyapparaj, learned State Additional Public Prosecutor assisted by Mr.M.Sylvester John for all five respondents are before us.



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5. Learned counsel for petitioner, notwithstanding very many averments in the supporting affidavit points out that a remand order dated 08.10.2022 being a remand order passed in the ground case is in English but a Tamil translation of the same has not been provided.

6. In response to this learned Additional Public Prosecutor submitted that it is a very terse order. In reply, learned counsel for petitioner submitted that, literacy level of the detenu is 6th standard in school and he is conversant only with his mother tongue Tamil. There is no disputation or contestation about the literacy level of the detenu. The remand order is all too crucial and non production of the same in a language known to the detenu, in our view, on the facts and circumstances of the case on hand, impairs and violates the detenu's right to make an effective representation, qua impugned detention order. It also falls foul of Pownammal principle, i.e., ratio in ***Pownammal vs. State of Tamil Nadu and another*** reported in (1999) 2 SCC 413. To be noted, this right is in the nature of infraction of constitutional safeguard ingrained in Clause (5) of Article 22 of the Constitution of India. Therefore, we have no hesitation in saying that the impugned detention order deserves to be set aside owing to infraction of Article 22(5) of the Constitution of India.



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7. Ergo, the sequitur is, H.C.P. No.2681 of 2022 is allowed, impugned detention order dated 23.11.2022 bearing reference Cr.M.P.No.36/2022 made by the second respondent is set aside and detenu Mr.Ramesh, male, aged 37 years, son of Mr.Subramaniyan, now detained in Central Prison, Tiruchirappalli is directed to be set at liberty forthwith unless required in connection with any other case/s.

(M.S,J.) (M.N.K.,J.)
01.03.2023

Index : Yes / No
Speaking / Non-speaking
Neutral Citation : Yes / No
rsi

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

To

- 1.The State of Tamil Nadu,
represented by its Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Fort St. George,
Chennai – 600 009.
- 2.The District Collector and District Magistrate,
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3.The Superintendent,
Central Prison,
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4.The Superintendent of Police,
O/o.Superintendent of Police,
Ariyalur District.

5.The Inspector of Police,
Ariyalur Police Circle,
Ariyalur District.

6.The Public Prosecutor,
High Court, Madras.

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