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H.C.P.No.2650 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.06.2023

CORAM

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

H.C.P.No.2650 of 2022

M.Backiyam
W/o.Marimuthu

.. Petitioner /
mother of detainee

Vs

1. The Secretary to Government
Home, Prohibition and Excise Department
Government of Tamil Nadu
Fort St. George, Secretariat
Chennai – 600 009.
2. The District Magistrate & District Collector
The Nilgiris District
Udhagamandalam
3. The Superintendent of Police
The Nilgiris District
Udhagamandalam
4. The Superintendent
Central Prison
Coimbatore

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5. The Inspector of Police
B-1 Town Central Police Station
Udhagamandalam
Nilgiris District

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus calling of the records of the second respondent in connection with detention order passed in Cr.M.P.No.10/2022 (goonda) dated 10.10.2022, set aside the same and direct the second respondent to produce Maharaja @ Chinna Maharaja, son of Marimuthu, aged 27 years, now confined in Central Prison, Coimbatore before this Court and set him at liberty.

For Petitioner : Mr.C.Sivakumar

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 mother of detainee assailing a 'preventive detention order dated 10.10.2022 bearing reference Cr.M.P.No.10/2022' [hereinafter 'impugned



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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 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 detinue is a 'Goonda' within the meaning of Section 2(f) of Act 14 of 1982.

3. There are two adverse cases and one ground case. The ground case which constitutes substantial part of substratum of the impugned preventive detention order is Crime No.191 of 2022 on the file of B1 Town Central Police Station for an alleged offence under Section 392 read with 397 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



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impugned detention order, it is not necessary to delve into the factual matrix or be detained further by facts.

4. Mr.C.Sivakumar, learned counsel on record for petitioner and Mr.E.Raj Thilak, learned State Additional Public Prosecutor 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 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 pages 303 to 305 of the booklet which is the order of the jurisdictional Judicial Magistrate giving three days police custody for the detenu. Learned counsel submitted that this has been referred to in the impugned preventive detention order by the Detaining Authority. Relevant portion reads as follows:

'Thiru.Maharajah @ China Maharaja and arrest of the co-accused and for the purpose of collating material fact in connection with the above case the accused was taken under



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police custody from 21.09.2022 to 23.09.2022.'

No Tamil translation of this document has been furnished to the detenu. We had the benefit of perusing the booklet. We also noticed that order of the jurisdictional judicial Magistrate 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 IX Standard 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:



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'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. In the case on hand, we find that order of the jurisdictional judicial Magistrate which has been relied on as part of the grounds of detention qua impugned detention order is a crucial document and not furnishing translation of the same in Tamil, the lone language known to the detenu has impaired his constitutional right to make an effective representation qua 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



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detention order dated 10.10.2022 bearing reference Cr.M.P.No.10 of 2022 made by the second respondent is set aside and the detenu Thiru.Maharaja @ Chinna Maharaja, aged 27 years, son of Thiru.Marimuthu 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.)

19.06.2023

Index : Yes

Neutral Citation : Yes

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



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6. The Public Prosecutor
Madras High Court, Chennai



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and
R.SAKTHIVEL, J.,**

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