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H.C.P.No.2658 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.06.2023

CORAM

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

H.C.P.No.2658 of 2022

Chithra

.. Petitioner

Vs.

State rep. By

1.The Secretary to Government,
Home, Prohibition & Excise Department,
Secretariat, Fort St.George,
Chennai-600 009.

2.The District Magistrate and District
Collector, Namakkal District, Namakkal.

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

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

5.The Inspector of Police,
Mohanur Police Station,
Namakkal 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

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in C.M.P.No.42/Goonda/2022(M1) dated 02.12.2022 on the file of the District Magistrate and District Collector, Namakkal District, the second respondent herein and quash the same as illegal and direct the respondents to produce the detenu Thiru.Prakash, S/o.Boopalan, aged about 45 years, now confined at Central Prison, Salem, before this Court and set him at liberty.

For Petitioner : Mr.D.Bhuvaneshwaran
for Ms.S.Sengkodi

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 wife of the detenu assailing a 'preventive detention order dated 02.12.2022 bearing reference C.M.P.No.42/Goonda/2022(M1)' [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 preventive detention order has been made by second respondent.



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2. Impugned preventive 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 is one adverse case. The ground case which constitutes substantial part of substratum of the impugned preventive detention order is Crime No.286 of 2022 on the file of Mohanur Police Station for alleged offences under Sections 294(b), 307 and 506(ii) 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 preventive detention order, it is not necessary to delve into the factual matrix or be detained further by facts.

4. Mr.D.Bhuvaneshwaran, learned counsel representing the counsel on record for petitioner and Mr.E.Raj Thilak, learned State



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Additional Public Prosecutor for all respondents are before us.

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5. In the support affidavit qua captioned HCP, several grounds have been raised/urged but *in the final hearing today*, learned counsel for petitioner projected his argument in his challenge against the impugned preventive detention order on the point that translated copy of a document relied on by the detaining authority in a language which the detenu is conversant with, has not been furnished to the detenu. Elaborating on the submission, learned counsel drew our attention to page No.64 of the 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 booklet. We also noticed that the arrest intimation form forms part of the ground on which the impugned detention order has been made.

6. As this turns on obtaining facts which are before us learned State Additional Public Prosecutor does not have much of a say.

7. Be that as it may we are informed that the literacy level of

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the detenu is 10th 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**. The question which the Honourable Bench of the Supreme Court addressed to itself in a similar fact situation is captured in paragraph 6 and the manner in which a Honourable 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. '

8. In the case on hand, we find that arrest intimation form which has been relied on as part of the grounds of detention qua



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

9. Apropos, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 02.12.2022 bearing reference C.M.P.No.42/Goonda/2022(M1) made by the second respondent is set aside and the detenu Thiru.Prakash, aged 45 years, son of Thiru. Boopalan 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.)
27.06.2023

Index : Yes / No
Neutral Citation : Yes / No
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P.S: Registry to forthwith communicate this order to Jail authorities in Central Prison, Salem.

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- 6.The Public Prosecutor,
High Court, Madras.



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

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