



H.C.P.No.2687 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.04.2023

CORAM

THE HONOURABLE MR.JUSTICE **M.SUNDAR**
and
THE HONOURABLE MR.JUSTICE **M.NIRMAL KUMAR**

H.C.P.No.2687 of 2022

Sivachandran

.. Petitioner

Vs

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

2.The Commissioner of Police,
Avadi City, Chennai.

3.The Superintendent,
Central Prison, Puzhal,
Chennai.

4.The Inspector of Police,
T-12 Poonamallee Police Station,
Poonamallee.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying
for issuance of a writ of habeas corpus to call for the entire records leading

Page Nos.1/8



H.C.P.No.2687 of 2022

to the detention of the petitioner under Act 14/1982 vide detention order No.135/BCDFGISSSV/2022 dated 11.10.2022 on the file of the second respondent and quash the same and consequently direct the respondents herein to produce the detenu Sivachandran S/o.Munusamy, Male aged 32 years before this Court and set him at liberty from Central Prison, Puzhal.

For Petitioner : Mr.K.M.Subheramaniam
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 the detenu assailing a 'preventive detention order dated 11.10.2022 bearing reference No.135/BCDFGISSSV/2022' [hereinafter 'impugned preventive detention order' for the sake of convenience and brevity]. To be noted, fourth respondent is the sponsoring authority and second respondent is the detaining authority as impugned detention order has been made by second respondent.



H.C.P.No.2687 of 2022

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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 five adverse cases. The ground case which is the sole substratum of the impugned detention order is Crime No.581/2022 on the file of T-12 Poonamallee Police Station for alleged offences under Sections 341, 294(b), 336, 392, 397, 427 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 detention order, it is not necessary to delve into the factual matrix or be detained further by facts.

4. Mr.K.M.Subheramaniam, learned counsel on record for petitioner



H.C.P.No.2687 of 2022

and Mr.R.Muniyapparaj, learned State Additional Public Prosecutor assisted by Mr.M.Sylvester John, learned counsel for all respondents are before us.

5.In the support affidavit qua captioned HCP, several points/grounds have been urged/raised but in the final hearing, Mr.S.Senthilvel learned counsel posited his campaign against the impugned preventive detention order on one point and that one point turns on case that is being relied on by the detaining authority as similar case for arriving at subjective satisfaction qua imminent possibility of detenu being enlarged on bail is not similar qua ground case. The case relied on by the detaining authority as similar case is order dated 01.02.2018 in CrI.M.P.No.1759 of 2018 on the file of the Principal Sessions Court, Chennai [to be noted this 'similar case' shall be referred to as *Aravind's case* as Aravind is the petitioner in this case]. *Aravind's case* order made by the Sessions Judge is in English and the same is at pages 265 and 266 with Tamil translation at pages 267 and 268 of grounds booklet. The Tamil translation is smudged and the name of the petitioner is not clear. We find that the literacy level of the detenu is 9th Standard in School and he is a School drop out. There is also an error in



H.C.P.No.2687 of 2022

translation of this bail order in *Aravind's case*. In the bail order which has been made by the learned Sessions Judge in English, learned Sessions Judge has imposed a condition that the petitioner should appear before the respondent police daily at 10.30 a.m., but in the translation it has been mentioned that the petitioner should appear before the Investigating Officer daily at 10.00 a.m. It is also seen that in Tamil translation there is a mention about the detenu signing before the Investigating Officer where there is no such mention in the bail order which has been made in English.

6.Considering the literacy level of the detenu we are of the view that the argument that the aforementioned error in translation has impaired the detenu's right to make an effective representation is acceptable. In this regard, 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. In **Powanammal's** case, 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,



H.C.P.No.2687 of 2022

Powanammal case is reported in **(1999) 2 SCC 413** and paragraphs 6 and 16

WEB COPY {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. In the light of the narrative discussion and dispositive reasoning thus far, we have no hesitation in saying that the impugned preventive detention order is vitiated and the same is liable to be dislodged.

8. Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 11.10.2022 bearing reference No.135/BCDFGISSSV/2022 made by the second respondent is set aside

Page Nos.6/8



H.C.P.No.2687 of 2022

and the detenu Thiru.Sivachandran, male, aged 32 years, son of

Thiru.Munusamy 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.)

(M.N.K.,J.)

26.04.2023

Index : Yes / No

Neutral Citation : Yes / No

Speaking Order/Non-Speaking Order

cse

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

To

- 1.Secretary to Government,
Prohibition and Excise Department,
Fort St. George, Chennai – 600 009.
- 2.The Commissioner of Police,
Avadi City, Chennai.
- 3.The Superintendent,
Central Prison, Puzhal, Chennai.
- 4.The Inspector of Police,
T-12 Poonamallee Police Station,
Poonamallee.
- 5.The Public Prosecutor,
High Court, Madras.

Page Nos.7/8



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H.C.P.No.2687 of 2022

**M.SUNDAR, J.,
and
M.NIRMAL KUMAR, J.,**

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H.C.P.No.2687 of 2022

26.04.2023

Page Nos.8/8