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H.C.P.No.2694 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.06.2023

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

H.C.P.No.2694 of 2022

Kannan

.. Petitioner

Vs.

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

2.District Collector and District Magistrate
of Kancheepuram District, Kancheepuram.

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

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

5.The Inspector of Police,
Uthiramerur Police Station,
Kancheepuram 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 in
connection with the order of detention passed by the second

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respondent dated 15.12.2022 in Rc.No.12840/2022/M6/D.O. No.46/2022 against the petitioner's son Uthirakumar @ Ruthra, male, aged 28 years, S/o.Kannan, who is confined at Central Prison, Vellore and set aside the same and direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner : Mr.D.Balaji

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 father of the detenu assailing a 'preventive detention order dated 15.12.2022 bearing reference Rc.No.12840/2022/M6/D.O. No.46/2022' [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.

2. Impugned preventive detention order has been made under 'The Tamil Nadu Prevention of Dangerous Activities of Bootleggers,



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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.576 of 2022 on the file of Uthiramerur Police Station for alleged offences under Sections 341, 294(b), 307, 392, 397 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.Balaji, learned counsel on record for petitioner and Mr.E.Raj Thilak, learned State 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 but in the final hearing today, learned counsel for petitioner pivoted his campaign against the impugned detention order on one point and that one point turns on incorrect/improper translation. The remand extension order pertaining to ground case at page No.167 of the grounds booklet says the date is 30.11.2022 and A1 to A4 were produced whereas in the Tamil translation at page No.169 of the grounds booklet, there is no mention about either the date or A1 to A4. The remand extension order in English and Tamil read as follows:

'English Version:

*Remand Extension Order
Dt. 30.11.2022*

*A1 to A4 produced before me. Remand extension
till 14.12.2022.'*

'Tamil Version:

கைது நீட்டிப்பு உத்தரவு

எதிரி என் முன் ஆஜர் செய்யப்பட்டு 14.12.2022
வரை நீதிமன்ற காவல் நீட்டிப்பு செய்து
உத்தரவிடப்படுகிறது.'



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6. We are informed that the literacy level of the detenu is 12th standard and he is a school drop out. We are also informed that the detenu is conversant only with Tamil.

7. In this view of the matter, we find that flaw in the translation is very serious and it certainly affects the rights of the detenu to make an effective representation which are rights and constitutional safeguard enshrined in Article 22(5) of the Constitution of India. We remind ourselves of *Powanammal* case which also on facts arose out of the preventive detention case. In *Powanammal* case in similar circumstances i.e., similar fact situation, Honourable Supreme Court addressed to itself the issue of providing a detenu with translated copies in a language in which the detenu is conversant with and answered the same interalia by saying that it is imperative and not providing translated copy in a language which the detenu is conversant with vitiates preventive detention. *Powanammal* case i.e., **Powanammal Vs. State of Tamil Nadu** is reported in **(1999) 2 SCC 413** and the relevant paragraphs wherein the question which the Honourable Supreme Court addressed to itself and the manner in



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which the question was answered are paragraphs 6 and 16 which 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 detainee, 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 detainee be set free forthwith unless she is required to be detained in any other case. The appeal is accordingly allowed. '

8. Applying *Powanammal* principle, we have no hesitation in saying that the impugned detention order in the case on hand deserves to be dislodged.

9. Apropos, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 15.12.2022 bearing reference Rc.No.12840/2022/M6/D.O.No.46/2022 made by the second respondent is set aside and the detenu Thiru.Uthirakumar @ Ruthra, aged 28 years, son of Thiru.Kannan is directed to be set at liberty



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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.)

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Index : Yes

Neutral Citation : Yes

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

To

- 1.The Secretary to the Government,
Home, Prohibition & Excise Department,
Secretariat, Chennai-600 009.
- 2.The District Collector and District Magistrate
of Kancheepuram District, Kancheepuram.
- 3.The Superintendent of Police,
Kancheepuram District, Kancheepuram.
- 4.The Superintendent of Prison,
Central Prison, Vellore.
- 5.The Inspector of Police,
Uthiramerur Police Station,
Kancheepuram District.
- 6.The Public Prosecutor,
High Court, Madras.



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

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