



H.C.P(MD)No.826 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.10.2023

CORAM :

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

H.C.P(MD)No.826 of 2023

Murali

... Petitioner

vs.

1. The State rep. by
The Principal Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai – 9.

2. The Commissioner of Police,
Trichy City,
Trichy.

3. The Superintendent,
Central Prison,
Trichy.

4. The Inspector of Police,
Fort (L&O) P.S
Trichy City.

... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Habeas Corpus, by calling for the records relating to the impugned order of Detention made in C.No. 54/Detention/C.P.O/T.C/2023 dated 13.06.2023 on the file of the Commissioner of Police, Trichy City, the 2nd respondent herein, branding



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the petitioner's brother / detenu by name Srinivasan, S/o Kannan, aged about 40 years as 'GOONDA' who is now confined in Central Prison, Trichy, and quash the impugned order of detention and set the petitioner's brother at liberty by producing him before this Court.

For Petitioner : Mr.T.J.Ebenezer Charles
For Respondents : Mr.A.Thiruvadi Kumar
Additional Public Prosecutor

ORDER

[Order of the Court was made by **M.SUNDAR, J.**]

This 'Habeas Corpus Petition' ['HCP' for the sake of brevity] has been filed by the brother of the detenu assailing a 'preventive detention order dated 13.06.2023 bearing reference C.No. 54/Detention/C.P.O/T.C/2023' [hereinafter 'impugned preventive detention order' for the sake of brevity and convenience] made by the second respondent Commissioner of Police, who shall hereinafter be referred to as 'detaining authority' for the sake of convenience and clarity. To be noted, 4th respondent is the sponsoring authority [hereinafter 'Sponsoring Authority' for the sake of convenience and clarity].



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] branding the detenu as a 'Goonda' within the meaning of Section 2(f) of Act 14 of 1982.

3. The ground case which constitutes sole substratum of the impugned preventive detention order is Crime No.983 of 2023 on the file of Trichy City Fort (L&O) Police Station, for the alleged offences under Sections 273 and 328 of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] and Sections 6(a) and 24(1) of Cigarette and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 and Section 77 of Juvenile Justice (Care and Protection of Children) Act, 2015. Considering the nature of the challenge to the impugned detention order, it is not necessary to delve into the factual matrix of the case.



4. Today, Mr.T.J.Ebenezer Charles, learned Counsel on record for petitioner and Mr.A.Thiruvadi Kumar, learned State Additional Public Prosecutor for all the respondents are before us.

5. Learned counsel on record for petitioner predicated his campaign against the impugned preventive detention order on one point and that point is not providing translated copy of documents (relied on by the detaining authority) in the lone language which the detenu is conversant with. Elaborating on this submission, learned counsel drew our attention to page Nos.45 and 46 of the grounds booklet served on the detenu which is a Government Order bearing reference G.O.(D)No.89 [Home, Prohibition and Excise (XVI) Department] dated 12.04.2023. Tamil translation of the Government Order has not been furnished to the detenu is learned HCP petitioner counsel's say.

6. We had the benefit of perusing the aforementioned grounds booklet. We also noticed that the said G.O.(D)No.89 forms part of the ground on which the impugned preventive detention order has been made. As this turns on obtaining scenario which comes to light from the grounds booklet which is 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 the detenu is VIII 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** principle i.e., ratio in **Powanammal Vs. State of Tamil Nadu {(1999) 2 SCC 413}**, wherein Hon'ble Supreme Court addressed itself to this translation point in a similar fact situation. The question which Hon'ble Supreme Court addressed itself to is captured in paragraph 6 and the manner in which Hon'ble Supreme Court answered this question is captured in paragraph 16. 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.'



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8. We find that the aforementioned **Powanammal** case applies in all force to the case on hand as we find that the Government Order which has been relied on as part of the grounds of detention *qua* 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 against the impugned preventive detention order. To be noted, this constitutional right is ingrained in the form of a safeguard in clause (5) of Article 22 of the Constitution of India. We therefore have no hesitation in saying that the impugned preventive detention order deserves to be dislodged in this habeas drill on hand.

9. Before concluding by writing the operative paragraph of this order, we also remind ourselves that preventive detention is not a punishment and HCP is a high prerogative writ.

10. Ergo, the sequitur is captioned HCP is allowed. Impugned preventive detention order dated 13.06.2023 bearing reference C.No. 54/Detention/C.P.O./T.C/2023 made by the second respondent is set aside



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and the detenu Thiru.Srinivasan, male, aged 40 years, son of Thiru.Kannan 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.)
30.10.2023

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, Tiruchirappalli.

To

1. The Principal Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai – 9.

2. The Commissioner of Police,
Trichy City,
Trichy.

3. The Superintendent,
Central Prison, Trichy.

4. The Inspector of Police,
Fort (L&O) P.S
Trichy City.

5. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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6. The Joint Secretary to Government,
Public (Law and Order) Department,
Secretariat, Chennai.



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

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ORDER MADE IN
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DATED : 30.10.2023