**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

Date of Reservation	05.01.2021
Date of Judgment	18.01.2021

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM**AND****THE HONOURABLE MR.JUSTICE G.ILANGO VAN****HCP(MD)No.717 of 2020**

K.Vallaiammal : Petitioner/Mother of the Detenu

Vs.

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

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

3.The Superintendent,
Central Prison,
Palayamkottai.

: Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Habeas Corpus calling for the records of the 2nd respondent in detention order H.S(M) Confdl. No.5/2020, dated 22.01.2020, quash the same and consequently, direct the respondents to produce the petitioner's son/detenu namely Vetriselvan, S/o.Kathiresan, aged 23 years who is now detained in Central Prison, Palayamkottai, before this court and set him at liberty and pass such further or other orders.

For Petitioner : Mr.S.Ramasamy

For Respondents : Mr.R.Anandharaj
Additional Public Prosecutor**O R D E R**(Order of the Court was made by **G.ILANGO VAN, J**)

The petitioner is the mother of the detenu, namely Vetriselvan, aged 23 years. The detenu has been detained under the Tamil Nadu Act 14 of 1982, as per the order of the 2nd respondent, in his proceedings in H.S.(M)Confdl.No.05/2020, dated 22.01.2020, branding him as "Sexual Offender" as contemplated under Section 2(ggg) of Tamil Nadu Act 14 of 1982. Challenging the same, the petitioner is before this court with this Habeas Corpus Petition.



2. We have heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the State and also perused the materials available on record.

3. Even though the learned counsel appearing for the petitioner raised various grounds assailing the order of detention, he mainly contended that the detention order passed against the detenu was not properly intimated to his family members and the detaining authority has not perused as the material documents placed by the sponsoring authority for the subjective satisfaction at the time of passing the order of detention and the detaining authority has not furnished the remand order in the ground case on the detenu, which shows the non-application of mind on the part of the 2nd respondent, while passing the order of detention against the detenu and the relied on documents were not properly translated and the delay in passing the detention order was not properly explained. In view of the above facts, the detention order passed by the 2nd respondent against the detenu is liable to be set aside.

4. On the other hand, the learned Additional Public Prosecutor appearing for the respondents/State submitted that the detention order passed against the detenu was properly intimated to the family members of the detenu and the relied on documents were properly translated and within reasonable time, the representation of the detenu was considered and rejected. It is further submitted that the 2nd respondent/detaining authority, after satisfying with the cogent and relevant materials placed by the sponsoring authority, passed the impugned order and there is no illegality in the impugned order and prays for dismissal of the Habeas Corpus Petition.

5. In the case on hand, a short point, which requires to be answered in the petition is the effect and consequence of non-supply of copy of the remand order, dated 24.12.2019, in Crime No.179 of 2019 on the file of Nalattinpudur Police Station, in spite of request made on 10.09.2020, on behalf of the detenu by his mother, who is the petitioner herein. The above case is the ground case herein upon which the impugned detention order, dated 22.01.2020, was passed. The copy of the remand order was not only furnished at the time of passing the impugned order, but also in spite of request made by this petitioner, as mentioned above.

6. A similar point is answered favourably in a like situation to the detenu in a decision reported in **G.Kalaiselvi Vs State of Tamilnadu and another (2007 (5) CTC 657)**. In that case, the Hon'ble Full Bench of this court held that refusal to supply copy of remand order without any valid reason will cause prejudice to the detenu. The relevant portion is extracted hereunder:-

"21. Law is well settled that the Detaining Authority is required to give copies of the relied upon documents along with grounds of detention and non-furnishing of relied upon document has the



effect of vitiating the order of detention. See **Pownammal V. State of Tamil Nadu and another, 1999 SCC (Cr1.) 231**. Where, however, a document is not relied upon, yet the detenu asks for copy of such document, which is either referred to or has got some bearing, it is the duty of the appropriate authority to furnish such copy or atleast indicate the reason why such copy is not supplied to the detenu in spite of specific request by the detenu. As already indicated, where a document asked for is on the face of it irrelevant, non-furnishing of such document is immaterial. Where, however, the document has got some relevance, refusal to supply such copy, in spite of specific request, without any valid reason, may have the effect of vitiating the order of detention as the detenu is likely to be prejudiced, inasmuch as he would not be in a position to make an effective representation.

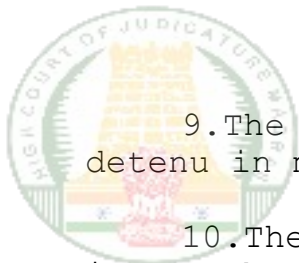
22. In the present case, in our opinion, when the detenu specifically asked for a copy of the remand order, dated 30.03.2007, the appropriate authority should have either furnished copy of such order or furnished sufficient reasons as to why such order could not be furnished. On this ground, the order is liable to be quashed."

7. From the above judgment, the following principles can be summarized:-

(i) that appropriate authority should furnish a copy of such order, if a request is made by the detenu; and

(ii) that when such a request is not complied, sufficient reasons must be furnished.

8. Here, in spite of the request made by the detenu, dated 10.09.2020, copy of the remand order was not furnished. With regard to the second principle, the learned Additional Public Prosecutor appearing for the respondents/State, in the course of argument, submitted that a copy of the remand extension order, dated 10.01.2020 was furnished. The remand order cannot be equated with the remand extension order. In the remand order, subjective satisfaction of the Judicial Magistrate will be recorded with regard to the compliance of all the legal requirements and the necessity of remand of a person to custody. But in the remand extension order, such details will not be available. So, the submission made by the learned Additional Public Prosecutor that remand extension order superfluous the remand order is not at all acceptable and it cannot be taken as sufficient reason for not furnishing the copy of the remand order.



9.The effect of this lapse is that prejudice was caused to the detenu in making effective representation.

10.The consequence of the lapse is the vitiation of the impugned detention order, dated 22.01.2020. Since the above discussed ground is sufficient to hold the impugned detention order as bad in law, we feel it not necessary to take all such other ground that on made in this petition for discussion.

11.For the reasons stated supra and in the light of the decision referred to above, we are of the considered view that the impugned detention order is liable to be set aside and accordingly, set aside. The Habeas Corpus Petition is allowed. Consequently, the detenu is directed to be released forthwith, if his presence is not required in connection with any other case.

Sd/-

Assistant Registrar

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

dss

Note:-In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To,

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

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

3.The Joint Secretary to Government,
Public(Law & Order), Fort St.George, Chennai-9.

4.The Superintendent of Prison,
Palayamkottai Central Prison,
Tirunelveli District.

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

Pre-Delivery order made in

HCP(MD) No.717 of 2020

18.01.2021