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H.C.P.(MD)No.1126 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 08.11.2021

Delivered on : 18.11.2021

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

and

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

H.C.P. (MD)No.1126 of 2021

S.Amutha

... Petitioner

-VS-

1.The Government of Tamil Nadu,
Rep. by the Additional Chief Secretary to Government,
Home, Prohibition & Excise Department,
Fort St. George,
Chennai - 600 009.

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

3.The Superintendent,
Central Prison,
Trichy.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Habeas Corpus, to call for the entire records connected with the detention order of the second respondent in P.D.No.83 of 2021, dated 20.07.2021, quash the same and direct the respondents to produce the body or person of the petitioner's husband namely, Kalyanaodai Senthil alias Senthil, aged 53 years, S/o.Duraiaraj, now confined at Central Prison, Tiruchirappalli and set him at liberty forthwith.

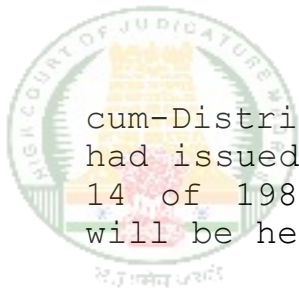
For Petitioner : Mr.N.R.Elango
Senior Counsel
for Mr.K.Mahendran

For Respondents : Mr.S.Ravi
Additional Public Prosecutor

O R D E R

S.VAIDYANATHAN, J.
and
G.JAYACHANDRAN, J.

The wife of the detenu viz., Kalyanaodai Senthil alias Senthil is the petitioner herein. On 20.07.2021, the District Collector-



cum-District Magistrate, Thanjavur, the second respondent herein had issued the preventive detention order under the Tamil Nadu Act 14 of 1982 and detained Kalyanaodai Senthil alias Senthil, who will be hereinafter called as 'the detenu'.

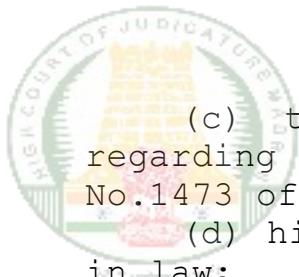
2.This Habeas Corpus Petition is filed to quash the detention order and set the detenu at liberty.

3.The grounds of detention served along with the detention order reveals that the detaining authority being satisfied on perusal of records that the detenu is in the habit of indulging in criminal offences continuously, he is a history-sheeted rowdy, his activities are of the nature are creating fear, terror and feeling of insecurity in the minds of the people of that locality and if he is allowed to remain at large, he will indulge in similar activities continuously causing insecurity in the minds of the people and disturbance to the public tranquility, has passed the detention order. Two criminal cases against the detenu were taken as adverse cases and those two cases, one of the cases is for the offences under Sections 294(b), 341 and 506(ii) of I.P.C., which was later altered into Sections 294(b), 341, 506 (ii) and 109 of I.P.C., on the file of Madukkur Police Station, in Crime No.1473 of 2020, dated 23.12.2020, the detenu and one Kandy @ Vairavamoorthy are shown as accused persons. The second case is for the offences under Sections 294(b), 353 and 307 of I.P.C. read with Section 25(1)(A) of the Arms Act, 1959, which was later altered into Sections 294(b), 353, 307 and 109 of I.P.C., read with Section 25(1)(A) of the Arms Act, 1959, on the file of Madukkur Police Station, in Crime No.1485 of 2020, dated 31.12.2020. In this case also, the name of the detenu is not shown as accused in the F.I.R. While two cases were pending against him, the Madukkur Police has apprehended the detenu on 14.07.2021 and brought to the Police Station. When he was in the lockup, his supporters ransacked the Police Station and enabled the detenu to escape from the lockup, for which, a case under Sections 147, 452, 294(b), 186, 224, 225, 285, 353 and 506(ii) of I.P.C. and Section 3(1) of the Tamil Nadu Property (Prevention of Damage and Loss) Act, 1992 read with Sections 149 and 109 of I.P.C., was registered by the Inspector of Police, Madukkur Police Station, in Crime No.581 of 2021 and the latter case is the ground case, which has invited slapping of preventive detention.

4.In the Habeas Corpus Petition, the wife of the detenu has pleaded that,

(a) the provision under which the detenu was arrested in the adverse case in Crime No.1473 of 2020, has not been properly mentioned in the Paper Book furnished to the detenu;

(b) the arrest of the detenu in Crime No.1473 of 2020 has not been properly intimated to the family members;



(c) the grounds of detention bristles with contradiction regarding the factum of arrest of the detenu in respect of Crime No.1473 of 2020.

(d) his arrest in the said case itself is illegal and non-est in law;

(e) he was arrested without any remand order and that ground alone is sufficient to quash the detention order;

(f) the alleged arrest of the detenu in the adverse case has not been properly informed to the family members and the information sent through SMS is not a valid information and contrary to the guidelines laid down by the Hon'ble Supreme Court;

(g) the nature of offence alleged in the adverse case and in the ground case is not similar;

(h) the detention order branding the detenu as a Goonda based on the ground case is illegal and arbitrary;

(i) in the adverse case, the detenu had not sought for any bail and therefore, the apprehension of the detaining authority that the detenu is likely to be released on bail, is baseless; and

(j) further, it is contended that the representation given by the detenu was not considered in time and there is a delay in disposal of the representation.

5.Per contra, the second respondent has filed counter affidavit, wherein it is stated that the detenu is a history-sheeter. Apart from two recent adverse cases, the detenu had involved in 11 other cases since 1994. While he was taken into custody by the Police, being an elected representative of the Political Party, his supporters around 15 in numbers, damaged the public property and set free the detenu by force. The Police Personnels were threatened and Government vehicle was set on fire. Later, the accused was arrested and produced before the learned Judicial Magistrate and remanded to judicial custody in Crime No.581 of 2021. As far as Crime No.1473 of 2020 is concerned, after obtaining orders from the learned Judicial Magistrate, the arrest was informed to the petitioner herein, who is the wife of the detenu. The petitioner was aware of the remand of the detenu in all the three cases, namely, Crime Nos.1473 and 1485 of 2020 and 581 of 2021. It is correct to state that in Crime No.1485 of 2020, the name of the detenu is not found. However, F.I.R. is not an Encyclopedia for the offence. Absence of his name in the F.I.R., is not a ground to plead innocence. In the course of investigation, the co-accused namely, Kandy @ Vairavamoorthy had confessed that he has involved in this case at the instigation of the detenu and it is a matter for trial and it is premature to infer innocence of the detenu, who is a chronic and habitual offender and history-sheeter. If he is left at large, it will cause panic in the minds of the public.



6.The learned Senior Counsel appearing for the petitioner while emphasizing the ground that English translation of the remand order was not furnished and the clean copy of the documents relied on by the detaining authority were not furnished, relied on the judgment of the Hon'ble Supreme Court in the case of **Powanammal Vs. State of Tamil Nadu and another** reported in **1999 (2) SCC 413**, wherein two out three Judges, in majority, have held that non-supply of Tamil version of the remand order is fatal to the detention.

7.Heard the learned counsel appearing on either side and perused the materials available on record.

8.The detenu is a politician. He was the Secretary of Madukkur Union and integrated Thanjavur District Dairy Director. When he was arrested in connection with attempt to murder case, his followers had ransacked the Police Station and rescued him from the lockup. The record indicates that he is a History-sheeter and had several criminal cases to his credit. In **Powanammal's case** [supra], the Hon'ble Supreme Court has held that copies of documents relied on in the grounds of detention must be furnished in the language understood by the detenu. Non-supply of documents in the detenu's language would be fatal, if it cause prejudice to the detenu from making effective representation. Further, in the said case, in spite of demand to furnish Tamil version of the document, since the detenu was not aware of English, the Tamil version of the remand order was not supplied to the detenu. Hence, **Justice K.T.Thomas and Justice S.S.M.Quadri** affirming in majority, held as under:-

'8. The law relating to preventive detention has been crystallized and the principles are well-nigh settled. The amplitude of the safeguard embodied in Article 22(5) extends not merely to oral explanation of the grounds of detention and the material in support thereof in the language understood by the detenu but also to supplying their translation in script or language which is understandable to the detenu. Failure to do so would amount to denial of the right of being communicated the grounds and of being afforded the opportunity of making a representation against the order. (See *Hadibandhu Das v. District Magistrate, Cuttack* [AIR 1969 SC 43 : (1969) 1 SCR 227])'

9.In the said judgment, the Hon'ble Supreme Court has also clarified that there must be a distinction between the document, which is relied upon by the detaining authority in the grounds of detention and a document which finds a mere reference in the grounds of detention. In the words of Hon'ble Supreme Court, the



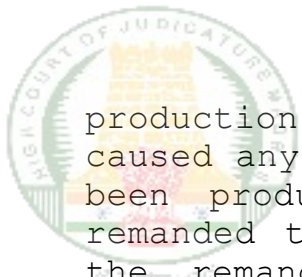
exception to the Rule is explained as below:-

''9. However, this Court has maintained a distinction between a document which has been relied upon by the detaining authority in the grounds of detention and a document which finds a mere reference in the grounds of detention. Whereas the non-supply of a copy of the document relied upon in the grounds of detention has been held to be fatal to continued detention, the detenu need not show that any prejudice is caused to him. This is because the non-supply of such a document would amount to denial of the right of being communicated the grounds and of being afforded the opportunity of making an effective representation against the order. But it would not be so where the document merely finds a reference in the order of detention or among the grounds thereof. In such a case, the detenu's complaint of non-supply of document has to be supported by prejudice caused to him in making an effective representation. What applies to a document would equally apply to furnishing a translated copy of the document in the language known to and understood by the detenu, should the document be in a different language.''

10. The learned Senior Counsel relying upon the remand report and remand extension order passed by the learned Judicial Magistrate, submitted that those documents are in English and also not legible, non-furnishing clean/true copy of those documents, had prejudiced the detenu to make effective representation. In this connection, the dissenting judgment of **Justice D.P.Wadhwa** in **Powanammal's** case [supra] also worth reference. The relevant portion of the said judgment reads as follows:-

''20. From the record, it is apparent that it was not necessary to supply to the detenu a copy of the order of remand and that no prejudice has been caused to the detenu on account of the non-supply of the Tamil translation of the order of remand. As rightly pointed out by the detaining authority that not only that the remand order which finds mention in the grounds which were given to the detenu in Tamil, the Magistrate also did tell the detenu of the order of remanding her. It may be noticed that the grounds recite that the detenu had earlier on four different occasions been convicted under Sections 4(1)(i) and 4(1)(b) of the Tamil Nadu Prohibition Act, 1937.''

11. The test of prejudice is applied in this case. Non-



production of translated Tamil version of the remand order has not caused any prejudice to the detenu. Soon after his arrest, he has been produced before the learned Judicial Magistrate and was remanded to judicial custody from time to time. The content of the remand order and remand extension appears to have been explained by the learned Judicial Magistrate and a copy of the remand report has been received by the detenu and he has also signed it. The representations of the detenu dated 24.07.2021 and 30.07.2021, indicate non-furnishing of translated version and difficulty in making proper representation without translated copy.

12.On cumulative assessment of the pleadings and records, the detaining authority appears to have applied his mind on all the documents and has passed the detention order, being satisfied that if the detenu is left at large, he may cause disturbance to the public peace and tranquility. Therefore, this Court is of the view that non-production of Tamil translation of the remand order had not prejudiced the detenu, since he had been explained orally by the learned Judicial Magistrate while remanding to judicial custody and the copy of the remand order has been served on the detenu after obtaining his acknowledgment.

13.For the above said reasons, this Court is of the view that the detention order passed by the second respondent warrants no interference. Hence, this Habeas Corpus Petition is dismissed.

Sd/-

Assistant Registrar (CS III)

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/ /2021

Sub Assistant Registrar(CS)

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 Additional Chief Secretary to Government of Tamil Nadu,
Home, Prohibition & Excise Department,
Fort St. George,
Chennai - 600 009.



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

3.The Superintendent,
Central Prison,
Trichy.

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

Copy to

The Joint Secretary to Government of Tamil Nadu,
Public (Law & Order)
Fort St. George,
Chennai - 600 009.

+1 CC to M/s.K. MAHENDRAN, Advocate (SR-34931[F] dated 18/11/2021)

**H.C.P. (MD)No.1126 of 2021
18.11.2021**

PK(CO)
SB(30.11.2021) 7P 7C