



HCP.No.1165/2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 09.11.2023

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THE HONOURABLE MR . JUSTICE S.S.SUNDAR

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

H.C.P.No.1165/2023

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Petitioner

Versus

1.The Secretary to the Government of Tamil Nadu
Home, Prohibition and Excise Department
Fort St George, Chennai 600 009.

2.The Commissioner of Police
O/o.The Commissioner of Police
Sankari Main Road, Linemedu
Gugai, Salem 636 006.

3.The Superintendent of Prison
Central Prison, Salem 636 007.

4.The Inspector of Police
Pallapatty Police Station
Angammal Colony
Salem 636 004.

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Respondents



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Prayer:- Habeas Corpus Petition filed under Article 226 of the Constitution of India praying for a Writ of Habeas Corpus calling for the records relating to the detention order passed by the 2nd respondent bearing number CMP.No.35/Goonda/Salem City/2023 dated 04.05.2023 detaining the detenu under Section 3[2] of Tamil Nadu Act 14 of 1982 as a Goonda, quashing the same and consequently setting the detenu Mr.Kannan, son of Thangavel, male, aged 34 years now detained at Central Prison, Salem at liberty.

For Petitioner : Mr.M.Rajeswaran
For Respondents : Mr.E.Raj Thilak
Additional Public Prosecutor
assisted by Mr.Aravind.C

ORDER

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

- (1)The petitioner, mother of the detenu Kannan, aged 34 years, has come forward with this petition challenging the detention order passed by the 2nd respondent dated 04.05.2023 slapped on her son, branding him as "Goonda" under the Tamil Nadu Act 14 of 1982].
- (2)Heard the learned counsel for the petitioner and the learned Additional Public Prosecutor appearing for the respondents.



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(3) Though several points have been raised by the learned counsel for the petitioner, it is stated that the detention order is liable to be quashed on the ground that the detenu was furnished with illegible copies of the Seizure Mahazar in the ground case, which were relied upon by the Detaining Authority to arrive at the subjective satisfaction about the possibility of the detenu's release on bail. Hence, it is submitted that the non-furnishing of illegible copies of the vital documents deprives the detenu of making effective representation against the detention order to the authorities concerned.

(4) It is seen that in pages No.102 to 104 of the Booklet furnished to the detenu, wherein the document pertaining to the Seizure Mahazar in the ground case is not clear and the said document is illegible. Furnishing of illegible copies of the vital document would deprive the detenu of making effective representation to the authorities against the order of detention.

(5) In this context, it is useful to refer to the judgment of the Hon'ble Supreme Court in ***Powanammal Vs. State of Tamil Nadu*** reported in ***(1999) 2 SCC 413***. The Hon'ble Supreme Court had occasion to deal with similar situation where in the Grounds of Detention referred to an



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order remanding the detenu therein to judicial custody was in English language. Since the tamil version of the document was not supplied to the detenu therein, a specific issue was raised by the Hon'ble Supreme Court whether failure to supply tamil version of the remand order passed in English, a language not known to the detenu therein, would vitiate the detenu's further detention. The Hon'ble Supreme Court, after discussing the safeguards embodied in Article 22[5] of the Constitution, observed that the detenu should be afforded an opportunity of making representation effectively against the Detention Order and that, the failure to supply every material in the language which can be understood by the detenu, is imperative. In the said context, the Hon'ble Supreme Court has held in Paragraphs 9 and 16 as follows:

"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



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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.

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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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(6) Thus, the detention order is vitiated on the ground of non-furnishing of legible copies of the vital documents and hence, the same is liable to be quashed.

(7) In view of the aforesaid reason, the detention order passed by the 2nd respondent dated 04.05.2023 in CP.No.35/Goonda/Salem City/2023 is hereby set aside and the Habeas Corpus Petition is allowed. The detenu is directed to be set at liberty forthwith unless he is required in connection with any other case.

[SSSRJ] [SMJ]
09.11.2023

AP
Internet : Yes



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To

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- 5.The Public Prosecutor
High Court, Madras.



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S.S.SUNDAR, J.,

AND

SUNDER MOHAN, J.,

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