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HCP.No.1212 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.10.2023

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THE HONOURABLE MR . JUSTICE **S.S.SUNDAR**
AND
THE HONOURABLE MR. JUSTICE **SUNDER MOHAN**

H.C.P.No.1212 of 2023

S.Punithanithi .. Petitioner

Vs.

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

2.Commissioner of Police,
Avadi City.

3.The Superintendent,
Central Prison, Puzhal, Chennai.

4.State rep. By
The Inspector of Police,
Thirunindravur Police Station,
Thiruvallur District.

.. Respondents

Petition filed under Article 226 of The Constitution of India praying for a Writ of Habeas Corpus to call for the records in connection with the order of detention passed by the second respondent dated 09.05.2023 in Memo No.126/BCDFGISSSV/2023 against the petitioner's husband Mr.Arun @ Duke Arun, male, aged 23 years, Son of Neelaraman, who is confined at Central Prison, Puzhal, Chennai and set aside the same and consequently direct the respondents to produce the detenu before this Court and set him at liberty.



WEB COPY



HCP.No.1212 of 2023

For Petitioner : Mr.A.Saranraj

For Respondents : Mr.E.Raj Thilak
Additional Public Prosecutor

ORDER

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

The petitioner, wife of the detenu Arun @ Duke Arun, has come forward with this petition challenging the detention order passed by the second respondent dated 09.05.2023 slapped on her husband, branding him as "Goonda" 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 14 of 1982].

2. Heard the learned counsel for the petitioner and the learned Additional Public Prosecutor appearing for the respondents.

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 sole ground that the detenu was furnished with a Booklet with the improper translation of the bail order dated 01.02.2018 in similar case in CrI.M.P. No.1759 of 2008, which is relied upon by the Detaining Authority to arrive at the



HCP.No.1212 of 2023

subjective satisfaction regarding the possibility of the detenu's release on bail.

4. It is seen from the booklet furnished to the detenu more particularly page Nos.158 to 161 of the booklet, the similar case bail order in CrI.M.P. No.1759 of 2008 dated 01.02.2018 has not been properly translated in the vernacular version. English version of bail order dated 01.02.2018 says '*Major portion of investigation might have been completed by this time. The murder case pending against the petitioner is of the year 2012 and another case of the year 2014...*' whereas the Tamil version says 'இவர் மீது ஏற்கனவே கொலை வழக்கு மற்றும் கொலை முயற்சி வழக்கு உள்ளது and it also says விசாரணை முழுமையாக முடிவு பெற்றுள்ளதால்...'. The translated version of the similar case bail order conveys a different meaning. Therefore, this Court is unable to discard the specific contention raised by the learned counsel for the petitioner that serious prejudice is caused to the detenu and the detenu was deprived from making an 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***



HCP.No.1212 of 2023

reported in **(1999) 2 SCC 413**. The Hon'ble Supreme Court had occasion to deal with similar situation wherein the Grounds of Detention referred to an order remanding the detenu therein to judicial custody was in English language. Since the Tamil version of the document was not supplied to the detenue 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 detenue therein, would vitiate the detenue's further detention. The Hon'ble Supreme Court, after discussing the safeguards embodied in Article 22(5) of the Constitution of India, observed that the detenus 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 detenue, is imperative. In the said context, the Hon'ble Supreme Court has held as follows:-

Paragraphs 9 and 16 {as in SCC journal} read 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



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HCP.No.1212 of 2023

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.

.....

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."



HCP.No.1212 of 2023

6. Thus, the detention order is vitiated on the ground of improper translation of the vital document in the vernacular language and hence, the same is liable to be quashed.

7. In view of the aforesaid reason, the detention order passed by the second respondent dated 09.05.2023 in No.126/BCDFGISSSV/2023, is hereby set aside and the Habeas Corpus Petition is allowed. The detenu viz., Arun @ Duke Arun, S/o.Chellappan, aged about 44 years, is directed to be set at liberty forthwith unless he is required in connection with any other case.

[S.S.S.R., J.] [S.M, J.]
12.10.2023

Index:Yes/No
Neutral Citation:Yes/No
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To

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- 2.The Commissioner of Police,
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- 3.The Superintendent,
Central Prison, Puzhal, Chennai.
- 4.The Inspector of Police,
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HCP.No.1212 of 2023

Thiruvallur District.

5. The Public Prosecutor
High Court, Madras.



WEB COPY



HCP.No.1212 of 2023

**S.S.SUNDAR, J.,
AND
SUNDER MOHAN, J.,**

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