



HCP.No.1338/2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 01.12.2023

CORAM

THE HONOURABLE MR . JUSTICE S.S.SUNDAR

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

H.C.P.No.1338/2023

Bharathi

Versus

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Petitioner

- 1.The Secretary to the Government
Home, Prohibition & Excise Department
Secretariat, Chennai 600 009.
- 2.District Collector and District Magistrate of
Kancheepuram District, Kancheepuram.
- 3.The Superintendent of Police
Kancheepuram District, Kancheepuram.
- 4.The Superintendent of Prison
Special Prison for Women, Vellore.
- 5.The Inspector of Police
Kancheepuram PEW Police Station
Kancheepuram District.

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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 in connection with the order of detention passed by the 2nd respondent dated 11.07.2023 in Rc.No.123/2023/M6-DO.No.22/2023 against the petitioner mother Kalaiyarasi, female, aged 50 years, wife of Ganesan, who is confined at Specia Prison for Women, Vellore and set aside the same and direct the respondents to produce the detenue before this Court and set her at liberty.

For Petitioner : Mr.D.Balaji

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, daughter of the detenue, has come forward with this petition challenging the detention order passed by the 2nd respondent dated 11.07.2023 slapped on her mother, branding her as "Bootlegger" 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.
- (3)Though several grounds are raised in the petition, the learned counsel for



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the petitioner submitted that the order of Detention passed by the Detaining Authority is vitiated as the detenu is deprived of a fair opportunity to make an effective representation on account of the fact that the Forensic Report and the bail order in the ground case in the English version has not been translated in the vernacular language.

(4) On a perusal of the Booklet, this Court finds the English version of the Forensic Report and the bail order in the ground case in pages No.97, 977 and 137. However, the said vital documents are not made available to the detenu in the vernacular language. It is in the said circumstances, this Court finds that the detenu is deprived of his right to make effective representation to the authorities concerned as against the Detention Order.

(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 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



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failure to supply tamil version of the Forensic Report and the bail order in the ground case 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 in SCC journal} 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 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



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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."*

(6) In view of the ratio laid down by the Hon'ble Supreme Court and in view of the aforesaid facts, this Court is of the view that the detention order is



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liable to be quashed.

(7) Accordingly, the detention order passed by the 2nd respondent dated 11.07.2023 in Rc.No.123/2023/M6-DO.No.22/2023 is hereby set aside and the Habeas Corpus Petition is allowed. The detenue is directed to be set at liberty forthwith unless she is required in connection with any other case.

[S.S.S.R., J.] [S.M, J.]
01.12.2023

AP
Internet : Yes



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To

- 1.The Secretary to Government
State of Tamil Nadu
Home, Prohibition & Excise Department
Fort St George, Chennai-9.
- 2.The District Collector and District Magistrate
Tiruvannamalai District, Tiruvannamalai.
- 3.The Superintendent of Police
Tiruvannamalai District, Tiruvannamalai.
- 4.The Superintendent
Central Prison, Vellore.
- 5.The Inspector of Police
Thamdrampet Police Station
Tiruvannamalai District.
- 6.The Public Prosecutor
High Court, Madras.



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

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