



HCP.No.1365 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.11.2023

CORAM

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

H.C.P.No.1365 of 2023

Surya

..

Petitioner

Vs.

State rep. By

1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Government of Tamil Nadu,
Fort St. George, Chennai - 9.

2.The Commissioner of Police,
Avadi City.

3.The Superintendent of Prison,
Central Prison - II, Puzhal, Chennai.

4.The Inspector of Police (Crime),
T-15 SRMC Police Station,
Chennai.

..

Respondents

Petition filed under Article 226 of The Constitution of India praying for a Writ of Habeas Corpus to call for the records pertaining to the order of detention dated on 27.06.2023 passed by the 2nd Respondent in No.168/BCDFGISSSV/2023 and quash the same as illegal and direct the respondents to produce the detenu Thiru.Surya, S/o. Selvam, male, aged about 24 years, now confined at Central Prison-II, Puzhal, Chennai and set him at liberty.

For Petitioner : Mr.E.Parthiban

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



HCP.No.1365 of 2023

ORDER

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

WEB COPY

The detenu Surya, has come forward with this petition challenging the detention order passed by the second respondent dated 27.06.2023 slapped on him, 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 grounds are raised in the petition, the learned counsel for the petitioner submitted that the order of Detention passed by the Detaining Authority suffers from non application of mind as paragraph No.6 of the similar case bail order in CrI.MP.No.1759/2018 in the English version in the Booklet, differs in the vernacular version. It is stated that there is an improper translation pertaining to the adverse cases.

4. On a perusal of the Booklet, in particular, page Nos.258



HCP.No.1365 of 2023

and 259, it is seen that bail order granted to the accused in a similar case is furnished and in paragraph No.6, it is stated as follows:-"**.....The murder case pending against the petitioner is of the year 2012 and another case is of the year 2014...**".

However, in the translated copy of the said bail order in the vernacular version, it is stated as follows:-"**இவர் மீது ஏற்கனவே கொலை வழக்கு மற்றும் கொலை முயற்சி வழக்கு உள்ளது.....**" Hence, it is seen that there is an improper translation of the similar case bail order in the vernacular version.

5. It is in the said circumstances, this Court finds that serious prejudice is caused to the detenu on account of improper translation in making effective representation against the Detention Order and that the Detention Order passed by the Detaining Authority is vitiated.

6. 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



HCP.No.1365 of 2023

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 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 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



HCP.No.1365 of 2023

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."*

7. 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 liable to be quashed.

8. In view of the aforesaid reason, the detention order passed by the second respondent dated 27.06.2023 in No.168/BCDFGISSSV/2023, is hereby set aside and the Habeas Corpus Petition is allowed. The detenu viz., Surya, S/o.Selvam, aged about 24 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.]
27.11.2023

Index:Yes/No
Neutral Citation:Yes/No
mmi



WEB COPY



HCP.No.1365 of 2023

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

mmi

To

- 1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Government of Tamil Nadu,
Fort St. George, Chennai - 9.
- 2.The Commissioner of Police,
Avadi City.
- 3.The Superintendent of Prison,
Central Prison - II, Puzhal, Chennai.
- 4.The Inspector of Police (Crime),
T-15 SRMC Police Station, Chennai.
- 5.The Public Prosecutor
High Court, Madras.

H.C.P.No.1365 of 2023

27.11.2023