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HCP.No.1377 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.1377 of 2023

S.Vijaya .. Petitioner

Vs.

1.The State of Tamil Nadu rep. By its
Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George, Chennai - 9.

2.The Commissioner of Police,
Salem City, Salem District.

3.The Superintendent of Prison,
Central Prison – Salem, Salem District.

4.The Inspector of Police,
Kitchipalayam Police Station,
Salem City, Salem 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
Detention order passed in C.M.P.No.62/Goonda/Salem City/2023
dated 27.06.2023 passed by the 2nd respondent herein and quash
the same and direct the respondents herein to produce the body of
the detenu namely Manikandan @ Kurangumani, aged 26 years,



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S/o. Settu, Vilayatu Mariamman Kovil Street, Pachapatti, Salem District, who is now confined in Central Prison – Salem, Salem District before this Court and set him at liberty.

For Petitioner : Mr.R.Dinesh Kumar
For Respondents : Mr.E.Raj Thilak
Additional Public Prosecutor
assisted by Mr.C.Aravind

ORDER

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

The petitioner, mother of the detenu Manikandan @ Kurangumani, has come forward with this petition challenging the detention order passed by the second respondent dated 27.06.2023 slapped on her son, 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.



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3. Though several points have been raised by the petitioner, learned counsel for the petitioner submitted that the detenu was furnished with a Booklet without the translation of accident register and post-mortem certificate in the vernacular language and the said documents are relied upon by the Detaining Authority to clamp the order of detention. Learned counsel also submitted that the subjective satisfaction arrived at by the detaining authority that the detenu is likely to be released on bail suffers from non-application of mind as bail was granted to the accused in Crl.M.P. No.3749 of 2021 after recording the no objection of the Public Prosecutor.

4. It is seen that the accident register and post-mortem certificate in English, found at page Nos.20 and 44 of the Booklet furnished to the detenu, have not been translated in the vernacular version. This non-furnishing of the vital documents in vernacular language 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***



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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 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 as follows:-

(1) 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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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 detenu be set free forthwith unless she is required to be detained in any other case. The appeal is accordingly allowed."*

6. Insofar as the second ground raised by the learned



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counsel for the petitioner regarding the subjective satisfaction arrived at by the detaining authority, on a perusal of page Nos.84 and 85 of the Booklet, this Court finds that bail was granted in the said case after recording that the petitioner therein is in jail for 74 days and no serious objection was raised by the prosecution for grant of bail and not on merits. Therefore, it is not a similar case and the subjective satisfaction of the detaining authority regarding the possibility of the detenu coming out on bail suffers from non-application of mind, which vitiates the detention order.

7.The Hon'ble Supreme Court, in the case of ***Rekha Vs. State of Tamil Nadu through Secretary to Government and Another*** reported in ***2011 [5] SCC 244***, has dealt with a situation where the Detention Order is passed without application of mind. In case any of the reasons stated in the order of detention is non-existent or a material information is wrongly assumed, that will vitiate the Detention Order. In the instant case, the Detaining Authority has arrived at the subjective satisfaction that the detenu is likely to be released on bail by referring to a bail order granted to an accused in a similar case in CrI.M.P.No.3749 of 2011, dated 22.12.2011. However, bail was granted in the said case on the ground that accused therein is in jail for 74 days and



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the prosecution has not raised serious objection for grant of bail and therefore, the subjective satisfaction of the Detaining Authority that the detenu is likely to be released on bail suffers from non-application of mind. When the subjective satisfaction was irrational or there was non-application of mind, the Hon'ble Supreme Court held that the order of detention is liable to be quashed. It is relevant to extract paragraphs No.10 and 11 of the said judgment of the Hon'ble Supreme Court:-

"10.*In our opinion, if details are given by the respondent authority about the alleged bail orders in similar cases mentioning the date of the orders, the bail application number, whether the bail order was passed in respect of the co-accused in the same case, and whether the case of the co-accused was on the same footing as the case of the petitioner, then, of course, it could be argued that there is likelihood of the accused being released on bail, because it is the normal practice of most courts that if a co-accused has been granted bail and his case is on the same footing as that of the petitioner, then the petitioner is ordinarily granted bail. However, the respondent authority should have given details about the alleged bail order in similar cases, which has not been done in the present case. A mere ipse dixit statement in the grounds of detention cannot sustain the*



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detention order and has to be ignored.

11.*In our opinion, the detention order in question only contains ipse dixit regarding the alleged imminent possibility of the accused coming out on bail and there was no reliable material to this effect. Hence, the detention order in question cannot be sustained."*

8. 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.

9. In view of the aforesaid reason, the detention order passed by the second respondent dated 27.06.2023 in C.M.P.No.62/Goonda/Salem City/2023, is hereby set aside and the Habeas Corpus Petition is allowed. The detenu viz., Manikandan @ Kurangumani, S/o.Settu, aged about 26 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
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To

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- 2.The Commissioner of Police,
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- 3.The Superintendent of Prison,
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- 4.The Inspector of Police,
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- 5.The Public Prosecutor
High Court, Madras.



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AND
SUNDER MOHAN, J.,**

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