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HCP.No.1427/2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 23.11.2023

CORAM

THE HONOURABLE MR . JUSTICE S.S.SUNDAR

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

H.C.P.No.1427/2023

Sivakumar

..

Petitioner

Versus

1.The Additional Chief Secretary to Government
Home, Prohibition and Excise Department
Fort St Goerge, Chennai 600 009.

2.The Commissioner of Police
Avadi City.

3.The Superintendent,
Central Prison, Puzhal
Chennai-66.

4.The Inspector of Police
PEW, Ambattur Unit
Avadi City.

..

Respondents

Prayer:- Habeas Corpus Petition filed under Article 226 of the Constitution of India praying for a Writ of Habeas Corpus calling for the records



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relating to the detention order passed by the 2nd respondent pertaining to the order made in BCDFGISSSV No.142/2023 dated 09.06.2023 in detain the detenu under 2[c] of Tamil Nadu Act 14 of 1982 as a Drug Offender and quash the same and direct the respondent to produce the detenu Kaviraj, son of Sivakumar, aged about 24 years who is detained at Central Prison, Puzhal, before this Court and set him at liberty.

For Petitioner : Mr.G.Nirmal Krishnan
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, father of the detenu, has come forward with this petition challenging the detention order passed by the 2nd respondent dated 09.06.2023 slapped on his son, branding him as "Drug Offender" 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 points have been raised by the petitioner, the learned counsel for the petitioner submitted that the Detaining Authority has relied upon a similar case bail order in CrI.MP.No.1842/2020 to arrive at the subjective satisfaction that the detenu is likely to be release on bail in



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the ground case. However, the similar case bail order furnished to the detenu in the Booklet in the vernacular language is illegible and could not be read. Hence, it is stated that the detention order is liable to be quashed on the ground of non-furnishing of legible copy of the vital document, depriving the detenu of his valuable right to make effective representation against the detention order to the authorities concerned.

(4) This Court, upon examination of the Booklet, is unable to discard any of the contentions of the learned counsel for the petitioner. It is seen from the Booklet furnished to the detenu, the bail order pertaining to the similar case in CrI.MP.No.1842/2020 in the vernacular language, is not clear and the said document is illegible. The furnishing of illegible copy of the document would deprive the detenu of his valuable right to make 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 order remanding the detenu therein to judicial custody was in English language.



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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 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 detention, the detenu need not show that



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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."

(6) In view of the ratio laid down by the Hon'ble Supreme Court and in view



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of the aforesaid facts, this Court is of the view that the detention order is liable to be quashed.

(7) Accordingly, the detention order passed by the 2nd respondent dated 09.06.2023 in No.142/BCDFGISSSV/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]
23.11.2023
[1/3]

AP
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To

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

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