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*HCP.No.1417/2023*

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 29.11.2023

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THE HONOURABLE MR . JUSTICE S.S.SUNDAR

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

H.C.P.No.1417/2023

Nathiya

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Petitioner

Versus

- 1.The Secretary to Government  
Home, Prohibition & Excise Department  
Secretariat, Fort St.George, Chennai-600 009.
- 2.The District Collector & District Magistrate  
Cuddalore District, Cuddalore.
- 3.The Superintendent of Police  
Cuddalore, Cuddalore District.
- 4.The Superintendent of Prison  
Central Prison, Cuddalore,  
Cuddalore District.
- 5.State rep.by its  
The Inspector of Police  
Thirupapuliyur Police Station  
Cuddalore District.

..

Respondents



*HCP.No.1417/2023*

**Prayer:-** Habeas Corpus Petition filed under Article 226 of the Constitution of India praying for a Writ of Habeas Corpus calling for the entire records relating to the petitioner's husband detention under Tamil Nadu Act 14 of 1982 vide detention order dated 02.07.2023 on the file of the 2<sup>nd</sup> respondent herein made in proceedings Memo.C3/D.O./32/2023 quash the same as illegal and consequently direct the respondents herein to produce the petitioner's husband namely Sudhagar son of Ayyasamy aged 35 years before this Court and set the petitioner's husband at liberty from detention now the petitioner's husband detained at Central Prison, Cuddalore.

For Petitioner : Mr.R.Prathapkumar  
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, wife of the detenu has come forward with this petition challenging the detention order passed by the 2nd respondent dated 02.07.2023 slapped on her husband, branding him 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 the petitioner submitted that the order of Detention passed by the



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Detaining Authority suffers from non application of mind as the details in the Remand Extension Order of the detenu which is in English and handwritten by the learned Judicial Magistrate No.1, Vridhachalam, has not been translated.

(4)On a perusal of the Booklet, in particular, page No.133, the English version of the Remand Extension Order in the ground case, it is seen that the extension of the remand period is in English and that too, it is handwritten by the learned Judicial Magistrate No.1, Vridhachalam and the same has not been translated in the vernacular language known to the detenu. It is stated that the detenu has completed only 10<sup>th</sup> standard.

(5)It is in the said circumstances, this Court finds that serious prejudice is caused to the detenu on account of non-translation of the vital document and he is deprived of a fair opportunity 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



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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 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*



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*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 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*



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*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) Accordingly, the detention order passed by the 2<sup>nd</sup> respondent dated 02.07.2023 in Memo.C3/D.O./32/2023 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.

[S.S.S.R., J.]                      [S.M, J.]  
29.11.2023

AP  
Internet :Yes



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- 3.The Superintendent of Police  
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Cuddalore District.
- 6.The Public Prosecutor  
High Court, Madras.



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

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