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HCP.No.1558/2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 19.10.2023

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THE HONOURABLE MR . JUSTICE S.S.SUNDAR

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

H.C.P.No.1558/2023

Chandra Kala

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Petitioner

Versus

1.State of Tamil Nadu rep.by
The Additional Chief Secretary to Government
Home, Prohibition & Excise Department
Secretariat, Chennai 600 009.

2.The Commissioner of Police
The Greater Chennai City,
Vepery, Chennai 600 007.

3.The Superintendent of Prison
Central Prison, Puzhal, Chennai-600 066.

4.The Inspector of Police
D2 Anna Salai Police Station
Chennai.

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Respondents



HCP.No.1558/2023

Prayer:- Habeas Corpus Petition filed under Article 226 of the Constitution of India praying for a Writ of Habeas Corpus calling for the records relating to the detention order in Memo No.182/BCDFGISSSV/2023 dated 22.05.2023 passed by the 2nd respondent under the Tamil Nadu Act 14 of 1982 and set aside the same and direct the respondents to produce the petitioner's son Manikandan s/o.Ramu aged about 21 years the detenu, now confined in Central Prison, Puzhal, Chennai before this Court and set him at liberty.

For Petitioner : Mr.T.V.Somasundaram
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.]

- (1)The petitioner, mother of the detenu Manikandan aged 21 years, S/o.Ramu, has come forward with this petition challenging the detention order passed by the 2nd respondent dated 24.05.2023 slapped on her son, branding him as "Goonda" 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 suffers from non application of mind as the offences mentioned in the English version of the bail petition filed by and on behalf of the detenu in the ground case, differs in the vernacular version.

(4)On a perusal of the Grounds of Detention, in particular, page No.231, the bail petition filed under Section 439 of Cr.P.C., by the detenu and the other accused, it is stated as follows:-*"The petitioners humbly submit that they were arrested by the respondent police on 29.04.2023 for the alleged offences u/s.341, 294[b], 323, 324, 326, 427, 307 & 506[ii] of IPC..."*. However, in the translated copy of the said bail petition in vernacular version, it is stated as follows:-*"மனுதாரர்கள் பணிவுடன் சமர்ப்பிப்பது யாதெனில், ச/பி.341, 294(பி), 323, 392, 397, 427, 506(ii) இதச-வின் கீழான குற்றங்களை இழைத்ததாகக் கூறப்பட்டு....."* Hence, it is seen that there is an improper translation of the provisions of the Indian Penal Code under which the detenu was charged and the charges are entirely new in the vernacular version. It is in the said circumstances, this Court finds that the subjective satisfaction



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arrived at by the Detaining Authority is irrational and suffers from non-application of mind.

(1) 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 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:



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"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 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."

(5) In view of the ratio laid down by the Hon'ble Supreme Court and in view of the aforesaid reasons, this Court is of the view that the detention order is liable to be quashed.

(6) Accordingly, the detention order passed by the 2nd respondent dated 22.05.2023 in No.182/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.

[S.S.S.R., J.] [S.M, J.]
19.10.2023

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To

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Home, Prohibition & Excise Department
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S.S.SUNDAR, J.,
AND
SUNDER MOHAN, J.,

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