



H.C.P.No.1608 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.12.2023

CORAM :

THE HONOURABLE MR. JUSTICE S.S. SUNDAR

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

H.C.P.No.1608 of 2023

Matheswari

... Petitioner

Vs.

1.State of Tamil Nadu,
Represented by its Secretary,
Prohibition and Excise Department,
Fort St. George, Chennai – 600 009.

2.Commissioner of Police/Detaining Authority,
Salem City.

3.Inspector of Police,
Veeranam Police Station,
Salem City.

4.The Superintendent of Police,
Salem City.

5.The Superintendent of Police,
Central Prison, Salem.

... Respondents



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Prayer : Habeas Corpus Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Habeas Corpus to call for the entire records relating to the impugned order of detention passed by the 2nd respondent in C.M.P.No.66/Goonda/Salem City/2023, dated 19.07.2023, and quash the same and consequently, direct the respondents to produce the detenu, Venkatesan, aged 37 years, S/o.Pachiappan, now confined in Central Prison, Salem, before this Court and set him at liberty forthwith.

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

ORDER

(Order of the Court was made by **S.S. SUNDAR, J.**)

The petitioner, sister of the detenu Venkatesan, aged 37 years, S/o.Pachiappan, has come forward with this petition challenging the detention order passed by the 2nd respondent dated 19.07.2023 slapped on her brother, branding him as "Goonda" under the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders,



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Goondas, Immoral Traffic Offenders, Sand 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 is vitiated for material irregularities, as the Remand Order dated 03.07.2023 has not been translated correctly to the vernacular language. It is stated that there is improper translation pertaining to the information to the detenu about his right to have free legal aid. It is therefore stated that the detenu is deprived of his right to make effective representation.

4.On a perusal of the Booklet, in particular, Page No.87, it is seen that, in the Remand Order passed by the Judicial Magistrate No.IV, Salem, in Veeranam Police Station Crime No.348 of 2023, dated 03.07.2023, there



is reference to the information to the detenu about his right to have free legal aid. However, the same is not found in the translated copy of the said order in the vernacular version at Page No.88 of the Booklet. Hence, this Court finds that there is an improper translation of the Remand 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, 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 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."



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WEB COPY 7. 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.

8. Accordingly, the detention order passed by the 2nd respondent in C.M.P.No.66/Goonda/Salem City/2023, dated 19.07.2023, is hereby set aside and the Habeas Corpus Petition is allowed. The detenu Venkatesan, aged 37 years, S/o.Pachiappan, 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.)
13.12.2023

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Internet : Yes

Index : Yes / No

Neutral Citation : Yes / No



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To

1. The Secretary,
Prohibition and Excise Department,
Fort St. George, Chennai – 600 009.
2. The Commissioner of Police/Detaining Authority,
Salem City.
3. The Inspector of Police,
Veeranam Police Station,
Salem City.
4. The Superintendent of Police,
Salem City.
5. The Superintendent of Police,
Central Prison, Salem.
6. The Public Prosecutor,
High Court, Madras.



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S.S. SUNDAR, J.
and
SUNDER MOHAN, J.

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