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HCP.No.1639/2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 22.11.2023

CORAM

THE HONOURABLE MR . JUSTICE S.S.SUNDAR

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

H.C.P.No.1639/2023

Nalayini

Versus

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Petitioner

1.State of Tamil Nadu rep.by
The Secretary,
Home, Prohibition & Excise Department
Fort St.George, Chennai-600 009.

2.The Commissioner of Police
Avadi City Police Commissioner,
O/o.The Commissioner of Police
Avadi, Chennai 600 054.

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

4.The Inspector of Police
E3 Minur Police Station
Tiruvallur District.

..

Respondents



HCP.No.1639/2023

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.161/BCDFGISSSV/2023 dated 23.06.2023 passed by the 2nd respondent under the Tamil Nadu Act 14 of 1982 and set aside the same and direct the respondent to produce the petitioner's son Prabakaran @ Thokki son of Nagaraj, the detenu now confined in Central Prison, Puzhal, Chennai, before this Court and set the petitioner's son Prabakaran @ Thokki son of Nagaraj aged about 22 years the detenu herein, set him at liberty.

For Petitioner : Mr.N.Naresh
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, mother of the detenu has come forward with this petition challenging the detention order passed by the 2nd respondent dated 23.06.2023 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



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Public Prosecutor appearing for the respondents.

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(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 suffers from non application of mind as the details in the Remand Order of the detenu in the ground case found in page No.127 has been improperly translated.

(4) On a perusal of the Booklet, in particular, page No.127, the English version of the Remand Order in the ground case, it is seen that in the cause title of the Remand Order, the Police Station, crime number and the offences in the ground case are mentioned as **"E3 Minjur Police Station, Crime No.225/2023 and u/s.147, 148, 324, 307 and 506[2] IPC"**.

Whereas in the vernacular language, the said details are furnished as **"சோழவரம் காவல் நிலையம், கு.எண்.228/2023, 429 இதச, 11(எல்) விலங்குகள் வதைத் தடுப்புச் சட்டம் 1960"**. Hence, it is seen that there is an improper translation of the Remand Order pertaining to the Ground case.

(5) It is in the said circumstances, this Court finds that serious prejudice is



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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 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



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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



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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."*

(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 2nd respondent dated



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23.06.2023 in Memo No.161/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.]
22.11.2023

AP
Internet :Yes



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To

- 1.The Secretary,
State of Tamil Nadu
Home, Prohibition & Excise Department
Fort St.George, Chennai-600 009.
- 2.The Commissioner of Police
Avadi City Police Commissioner,
O/o.The Commissioner of Police
Avadi, Chennai 600 054.
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- 5.The Public Prosecutor
High Court, Madras.



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

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