



HCP.No.1768/2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 14.12.2023

CORAM

THE HONOURABLE MR . JUSTICE S.S.SUNDAR

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

H.C.P.No.1768/2023

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Petitioner

Versus

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

2.The Commissioner of Police
Avadi City.

3.The Inspector of Police
M5 Ennore Police Station
Chennai.

4.The Superintendent
Central Prison, Puzhal, Chennai.

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Respondents

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



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relating to petitioner's son detention under Tamil Nadu Act 14 of 1982 vide detention order dated 24.07.2023 on the file of the 2nd respondent herein made in proceedings No.185/BCDFGISSSV/2023 and quash the same as illegal and consequently direct the respondents herein to produce the said petitioner's son namely Guna @ Gunasekaran, aged 22 years, son of Rajesh, before this Court and set him at liberty now petitioner's son detained at Central Prison, Puzhal, Chennai 600 066.

For Petitioner : Mr.M.Mahendran

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 24.07.2023 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 is vitiated as the detenu is deprived of a fair opportunity to make an effective representation on account of the fact that the Birth Certificate of the detenu in the English version has not been translated in the vernacular language.

(4) On a perusal of the Booklet, this Court finds the English version of the Birth Certificate of the detenu in page No.114. However, the said vital documents are not made available to the detenu in the vernacular language. It is in the said circumstances, this Court finds that the detenu is deprived of his right to make effective representation to the authorities concerned as against the Detention Order.

(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. 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



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failure to supply tamil version of the Forensic Report and the bail order in the ground case 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 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



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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."

(6) The second contention raised by the learned counsel for the petitioner is that the subjective satisfaction arrived at by the Detaining Authority that the detenu is likely to be released on bail suffers from non-application of mind. In the Grounds of Detention, the Detaining Authority has simply observed that “....He has moved a bail application for M5 Ennore Police Station Cr.No.275/2023 before the Court of Principal District and Sessions Judge, Thiruvallur, in Crl.MP.No.3109/2023 and the same is pending. Hence, I infer that is very likely of his coming out on bail in M5 Ennore Police Station Cr.No.275/2023”. This statement of the



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Detaining Authority without any material, according to petitioner's counsel, is *ipse dixit* and suffers from non application of mind. Hence, on the above ground also, the Detention Order is liable to be quashed. He submitted that the Special Report of the Sponsoring Authority is not dated. Hence, the learned counsel for the petitioner raised a *bona fide* doubt as to the date on which the Special Report was sent by the Sponsoring Authority to the Detaining Authority. The learned counsel further pointed out that, unless the Special Report of the Sponsoring Authority is immediately before the Detention Order, it may not have relevance and hence, the subjective satisfaction of the Detaining Authority based on these undated documents, would vitiate the Detention Order.

(7) It is seen from records that the Special Report of the Sponsoring Authority is not dated. On a perusal of the Grounds of Detention, it is seen that, in Para No.3, the statement of the Detaining Authority is not based on any materials and there is no reference to any similar cases to arrive at such subjective satisfaction. When the Special Report of the Sponsoring Authority is not dated, the veracity of the Report becomes doubtful. The compelling necessity to detain the detenu would also



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depend on when the Sponsoring Authority has sent his Report. In the absence of the report, the compelling necessity to detain, becomes suspect. Hence, this Court is of the view that the subjective satisfaction arrived at by the Detaining Authority based on such undated materials, suffers from non-application of mind.

(8)The Hon'ble Supreme Court, in the case of ***Rekha Vs. State of Tamil Nadu through Secretary to Government and Another*** reported in **2011 [5] SCC 244**, has dealt with a situation where the Detention Order is passed without an application of mind. In case, any of the reasons stated in the order of detention is non-existent or a material information is wrongly assumed, that will vitiate the Detention Order. When the subjective satisfaction was irrational or there was non-application of mind, the Hon'ble Supreme Court held that the order of detention is liable to be quashed. It is relevant to extract paragraphs No.10 and 11 of the said judgment of the Hon'ble Supreme Court:-

“10.In our opinion, if details are given by the respondent authority about the alleged bail orders in similar cases mentioning the date of the orders, the



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bail application number, whether the bail order was passed in respect of the co-accused in the same case, and whether the case of the co-accused was on the same footing as the case of the petitioner, then, of course, it could be argued that there is likelihood of the accused being released on bail, because it is the normal practice of most courts that if a co-accused has been granted bail and his case is on the same footing as that of the petitioner, then the petitioner is ordinarily granted bail. However, the respondent authority should have given details about the alleged bail order in similar cases, which has not been done in the present case. A mere ipse dixit statement in the grounds of detention cannot sustain the detention order and has to be ignored.

11. In our opinion, the detention order in question only contains ipse dixit regarding the alleged imminent possibility of the accused coming out on bail and there was no reliable material to this effect. Hence, the detention order in question cannot be sustained."



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(9) 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.

(10) Accordingly, the detention order passed by the 2nd respondent dated 24.07.2023 in No.185/BCDFGISSSV/2023 is hereby set aside and the Habeas Corpus Petition is allowed. The detenue is directed to be set at liberty forthwith unless she is required in connection with any other case.

[S.S.S.R., J.] [S.M, J.]
14.12.2023

AP
Internet : Yes



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To

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State of Tamil Nadu
Home, Prohibition & Excise Department
Secretariat, Chennai 600 009.
- 2.The Commissioner of Police
Avadi City.
- 3.The Inspector of Police
M5 Ennore Police Station
Chennai.
- 4.The Superintendent
Central Prison, Puzhal, Chennai.
- 5.The Public Prosecutor
High Court, Madras.



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

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