



HCP.No.1799/2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 01.11.2023

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THE HONOURABLE MR . JUSTICE S.S.SUNDAR

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

H.C.P.No.1799/2023

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Petitioner

Versus

- 1.State of Tamil Nadu rep.by
The Additional Chief Secretary to Government
Home, Prohibition & Excise Department
Fort St George, Chennai 600 009.
- 2.The District Magistrate & District Collector
of Tiruvallur District, O/o.The District Magistrate
& District Collector, Tiruvallur District
Tiruvallur.
- 3.The Superintendent of Police
Tiruvallur, Tiruvallur District.
- 4.The Superintendent of Prison
Central Prison-II, Puzhal, Chennai-600 066.



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5.The Inspector of Police
Tiruvallur Town Police Station
Tiruvallur District.

.. Respondents

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 BCDFGISSSV No.14/2023 dated 29.05.2023 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 Franklin, son of Amulraj, aged about 23 years the detenu now confined in Central Prison-II, Puzhal, Chennai before this Court and set him at liberty.

For Petitioner : Mr.Y.Selvaraj
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 Franklin, aged 23 years, S/o.Amulraj, has come forward with this petition challenging the detention order passed by the 2nd respondent dated 29.05.2023 slapped on her son, branding him as "Goonda" under the Tamil Nadu Act 14 of 1982.



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(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 suffers from non application of mind as the Surrender Order and the Remand Extension Order 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 Surrender Order as well as the Remand Extension Order in pages No.33 and 45. 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 a fair opportunity to make effective representation to the authorities concerned as against the Detention Order.

(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



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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 the grounds of detention has been held to be fatal to continued



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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."*



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(5)Further, on a perusal of the Grounds of Detention, in particular, paragraph No.10, it is seen that the Detaining Authority has not recorded any statement as to the subjective satisfaction regarding the possibility of the detenu coming out on bail. Hence, the order of detention is vitiated on the ground of total non application of mind on the part of the Detaining Authority. 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 29.05.2023 in BCDFGISSSV No.14/2023 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.]
01.11.2023

AP
Internet : Yes



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To

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- 2.The District Magistrate & District Collector
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- 5.The Inspector of Police
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Tiruvallur District.
- 6.The Public Prosecutor
High Court, Madras.



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

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