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H.C.P.No.1834 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.12.2023

CORAM :

THE HONOURABLE MR. JUSTICE S.S. SUNDAR
AND
THE HONOURABLE MR. JUSTICE SUNDER MOHAN

H.C.P.No.1834 of 2023

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... Petitioner

Vs.

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

2.The Commissioner of Police,
Tambaram City,
Office of the Commissioner of Police,
(Goondas Section),
Sholinganallur,
Chennai – 600 119.

3.The Superintendent of Police,
Central Prison, Puzhal.

4.The Inspector of Police,
PEW, Tambaram,
Chennai.

... 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 records relating to the detention order dated 06.07.2023 passed by the 2nd respondent in B.C.D.F.G.I.S.S.V.No.29 of 2023 and quash the same and direct the respondents herein to produce the petitioner's son M.Mohamed Riswan, S/o.Mohamed Ashraf, aged 26 years, who is presently under going detention in the Central Prison, Puzhal, before this Court and set him at liberty forthwith.

For Petitioner	:	Mr.P.Chandrasekar
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.**)

The petitioner, mother of the detenu M.Mohamed Riswan, S/o.Mohamed Ashraf, aged 26 years, has come forward with this petition challenging the detention order passed by the 2nd respondent dated 06.07.2023 slapped on her son, branding him as "Drug Offender" under the



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Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, 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, as the copies of the Arrest/Court Surrender Form and the Arrest Intimation Form found in the Booklet furnished to the detenu are not legible. It is therefore stated that the detenu is deprived of his valuable right to make effective representation.

4.On a perusal of the Booklet furnished by the Detaining Authority, this Court finds that Page Nos.15 and 17 of the Booklet pertaining to Arrest/Court Surrender Form and Arrest Intimation Form respectively,



which are relied upon by the Detaining Authority, are not clear and are illegible. It is in the said circumstances, this Court finds that serious prejudice is caused to the detenu on account of furnishing of illegible copies of vital documents, due to which the detenu is deprived of his valuable right to make effective representation against the Detention Order and that therefore, the Detention Order passed by the Detaining Authority is vitiated.

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, 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.

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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*



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the detenue be set free forthwith unless she is required to be detained in any other case. The appeal is accordingly allowed."

6.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.

7.Accordingly, the detention order passed by the 2nd respondent in B.C.D.F.G.I.S.S.S.V.No.29 of 2023, dated 06.07.2023, is hereby set aside and the Habeas Corpus Petition is allowed. The detenu M.Mohamed Riswan, S/o.Mohamed Ashraf, aged 26 years, 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.)
18.12.2023

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