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HCP.No.1872/2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 29.11.2023

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THE HONOURABLE MR . JUSTICE S.S.SUNDAR

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

H.C.P.No.1872/2023

Janani

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Petitioner

Versus

1.The State of Tamil Nadu

The Addl. Chief Secretary to Government [Home]
Prohibition & Excise Department
Fort St George, Secretariat, Chennai 600 009.

2.The Commissioner of Police

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

3.The Superintendent

Central Prison, Puzhal, Chenna 600 066.

4.The Inspector of Police

Law and Order
T3 Korattur Police Station
Korattur, Chennai.
Tamil Nadu 600 080.

..

Respondents



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Prayer:- Habeas Corpus Petition filed under Article 226 of the Constitution of India praying for a Writ of Habeas Corpus calling for the records in connection with the order of detention dated 01.07.2023 passed by the 2nd respondent vide No.170/BCDFGISSSV/2023 against the petitioner's husband namely Raghul son of Sridhar, aged about 30 years, now confined at Central Prison, Puzhal, Chennai and set aside the same and direct the respondents to produce the above named detenu before this Court and set him at liberty.

For Petitioner : Mr.K.Prabakar
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.]

- (1)The petitioner, wife of the detenu has come forward with this petition challenging the detention order passed by the 2nd respondent dated 01.07.2023 slapped on her husband, 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.



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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 paragraph No.6 of the similar case bail order in Crl.MP.No.1759/2018 in the English version in the Booklet, differs in the vernacular version. It is also stated that there is an improper translation pertaining to adverse cases.

(4) On a perusal of the Booklet, in particular, page No.249, it is seen that bail order granted to the accused in a similar case is furnished and in paragraph No.6, it is stated as follows:-"***.....The murder case pending against the petitioner is of the year 2012 and another case is of the year 2014...***". However, in the translated copy of the said bail order in the vernacular version, it is stated as follows:-"***இவன் மீது ஏற்கனவே கொலை வழக்கு மற்றும் கொலை முயற்சி வழக்கு உள்ளது.....***". Hence, it is seen that there is an improper translation of the similar case bail order in the vernacular version.

(5) It is also seen that in the English version of the grounds of detention while referring to the adverse cases, it has been stated that "*At the time of*



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his arrest in T3 Korattur Police Station Cr.No.332/2023, the accused Thiru Raghul admitted that he was involved in the above offence along with his associates." However, in the vernacular version, it has been stated that "ட்டி-1 அம்பத்தூர் கா.நி.கு.எண்.332/2023-ல் எதிரி திரு.ராகுல் என்பவர் கைது செய்யப்பட்டப்போது மேற்கூறிய குற்றத்தில் தனது கூட்டாளிகளுடன் சேர்ந்து ஈடுபட்டதாக ஒப்புக்கொண்டார்..".

(6)It is in the said circumstances, this Court finds that serious prejudice is caused to the detenu on account of improper translation and is deprived of a fair opportunity in making effective representation against the Detention Order and that the Detention Order passed by the Detaining Authority is vitiated.

(7)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



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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 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



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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."

(8) 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



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is liable to be quashed. It is also seen that this Court had set aside the order of detention in respect of the co-detenu, on 06.11.2023 in HCP.No.1298/2023.

(9)Accordingly, the detention order passed by the 2nd respondent dated 01.07.2023 in No.170/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.]
29.11.2023

AP
Internet :Yes



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To

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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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