



HCP.No.1866/2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 29.11.2023

CORAM

THE HONOURABLE MR . JUSTICE S.S.SUNDAR

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

H.C.P.No.1866/2023

Chandralekha

Versus

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Petitioner

1.The State of Tamil Nadu rep.by
its Additional Chief Secretary to Government,
Home, Prohibition & Excise Department
Fort St George, Secretariat, Chennai 600 009.

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

3.The Superintendent,
Central Prison, Puzhal, Chennai 600 066.

4.The Inspector of Police,
Law and Order
E3 Korattur Police Station
Chennai Tamil Nadu 600 080.

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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.169/BCDFGISSSV/2023 against the petitioner's husband namely Kulasekaran @ Kutty, aged about 44 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.



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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 made the following two submissions:-

(a) The order of Detention passed by the Detaining Authority suffers on account of improper translation of the similar case pointing out that bail order in CrI.MP.No.1759/2018 in the English version in the Booklet, differs in the vernacular version.

(b) He also assailed the order of detention on the ground of delay in considering the representation of the detenu, dated 01.08.2023. According to the learned counsel for the petitioner, the representation dated 01.08.2023, was received by the Government on 03.08.2023 ; and though the file has been dealt with by the Deputy Secretary on the next day on 04.08.2023, the Minister concerned dealt with the file only on 11.08.2023 and the Rejection Letter prepared and was sent to the detenu on the same day. It is the further submission of the learned counsel that this inordinate delay in considering the representation remains unexplained and the same vitiates the detention order. In



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support of his contention, the learned counsel for the petitioner relied on the judgment of the Hon'ble Supreme Court in ***Rajammal vs. State of Tamil Nadu, reported in (1999) 1 SCC 417.***

(4)On a perusal of the Booklet, in particular, page No.253, 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 in the said circumstances, this Court finds that serious prejudice is 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



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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 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



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

(7)As regards the second contention of the learned counsel for the petitioner in relation to the delay in considering the representation, on perusal of the records, we find that, the representation of the detenu, dated 01.08.2023, which was received by the Government on 04.08.2023 ; which was dealt with by the Deputy Secretary on 04.08.2023, was dealt with by the



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Minister concerned only on 11.08.2023 and the Rejection Letter was prepared on the same day. Thus, we find there is a considerable delay of five days [after excluding the intervening holidays, namely 05.08.2023 and 06.08.2023] in considering the representation of the petitioner. This delay in considering the detenu's representation remain unexplained.

(8) It is trite law that the representation should be very expeditiously considered and disposed of with a sense of urgency and without avoidable delay. Any unexplained delay in the disposal of the representation would be a breach of the constitutional imperative and it would render the continued detention impermissible and illegal. From the records produced, we find that no acceptable explanation has been offered for the inordinate delay of four days. Therefore, we have to hold that the delay has vitiated further detention of the detenu.

(9) In the judgment of the Hon'ble Supreme Court in ***Rajammal's case (cited supra)***, it has been held as follows:-

"It is a constitutional obligation of the Government to consider the representation forwarded by the detenu without



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any delay. Though no period is prescribed by Article 22 of the Constitution for the decision to be taken on the representation, the words "as soon as may be " in clause (5) of Article 22 convey the message that the representation should be considered and disposed of at the earliest."

(10)As per the dictum laid down by the Supreme Court in above cited **Rajammal's case**, number of days of delay is immaterial and what is to be considered is whether the delay caused has been properly explained by the authorities concerned. But, here the inordinate delay of four days, has not been properly explained at all.

(11)Further, in a recent decision in **Ummu Sabeena vs. State of Kerala - 2011 STPL (Web) 999 SC**, the Hon'ble Supreme Court has held that the history of personal liberty, as is well known, is a history of insistence on procedural safeguards. The expression 'as soon as may be', in Article 22(5) of the Constitution of India clearly shows the concern of the makers of the Constitution that the representation, made on behalf of the detenu, should be considered and disposed of with a sense of urgency and without any avoidable delay.

(12)In the light of the above facts and law, we have no hesitation in



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quashing the order of detention on the ground of delay on the part of the Government in disposing of the representation of the detenu and on the ground of improper translation depriving the detenu a fair opportunity to make effective representation against the detention order before the authorities concerned.

(13) Accordingly, the detention order passed by the 2nd respondent dated 01.07.2023 in No.169/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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State of Tamil Nadu
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- 2.The Commissioner of Police
O/o.The Commissioner of Police
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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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