

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.12.2023

CORAM

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

H.C.P.No.2186 of 2023

Guna .. Petitioner

Vs.

1.The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 9.

2.District Collector and District Magistrate,
Coimbatore, Coimbatore District.

3.The Superintendent of Police,
Coimbatore, Coimbatore District.

4.The Superintendent,
Central Prison, Coimbatore.

5.State rep. By
The Inspector of Police,
Annur Police Station, Coimbatore District. .. Respondents

Petition filed under Article 226 of The Constitution of India praying for a Writ of Habeas Corpus to call for the records in connection with the order of detention passed by the second respondent dated 25.08.2023 in Cr.M.P.No.28/D.O./2023 against the petitioner's brother Senthilkumar, male, aged 45 years, son of Govindarajan @ Govindharaj, who is confined at Central Prison, Coimbatore and set aside the same and consequently direct the

respondents to produce the detenu before this Court and set her at liberty.

For Petitioner : Mr.A.Saranraj

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, brother of the detenu Senthilkumar, has come forward with this petition challenging the detention order passed by the second respondent dated 25.08.2023 slapped on his brother, branding him as "Drug Offender" under the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Cyber Law Offenders, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Sexual 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 points have been raised in the petition, learned counsel for the petitioner submitted that improper

translation of the proforma furnished by the jail authority which is also relied upon by the detaining authority vitiates the detention order.

4. We have perused the booklet furnished to the detenu. English version of the proforma furnished by the jail authority is found at Page No.39 of the booklet and the translated version of the same is found at Page No.40 of the booklet. In the English version of the proforma, below the caption 'Remand Details', the name of the Court which remanded the detenu was mentioned as Special Court for EC Cases, Coimbatore, whereas in the Tamil version of the proforma, the name of the Court has been wrongly translated as Special Court for POCSO Act Cases, Coimbatore. This material irregularity vitiates the detention order and the detenu was deprived of his right to make an effective representation as against the order of detention.

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 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 detinue therein to judicial custody was in English language. Since the Tamil version of the document was not supplied to the detinue 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 detinue therein, would vitiate the detinue's further detention. The Hon'ble Supreme Court, after discussing the safeguards embodied in Article 22[5] of the Constitution, observed that the detinue 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 detinue, 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.

...

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."*

7. 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.

8. In view of the aforesaid reason, the detention order passed by the second respondent dated 25.08.2023 in Cr.M.P.No.28/D.O./2023, is hereby set aside and the Habeas Corpus

Petition is allowed. The detenu viz., Senthilkumar, S/o. Govindharaj, aged about 45 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.]
22.12.2023

Index:Yes/No
Neutral Citation:Yes/No
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AND
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