



H.C.P.(MD) No.1446 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 26.04.2023

CORAM:

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

AND

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

H.C.P.(MD)No.1446 of 2022

Vinothini

... Petitioner / Wife of Detenue

Vs.

1.The Additional Chief Secretary to Government,

State of Tamil Nadu,

Home, Prohibition and Excise Department,

Fort St. George,

Chennai – 600 009.

2.The District Collector and District Magistrate,

Office of the District Collector and District Magistrate,

Sivagangai District,

Sivagangai.

3.The Superintendent of Prison,

Madurai Central Prison,

Madurai.

...Respondents



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PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, to call for the entire records, connected with the detention order of the Respondent No.2 in Cr.M.P.No.36/Goonda/2022 dated 06.08.2022 and quash the same and direct the Respondents to produce the body or person of the detenu by name Ganesan, son of Karunanithi, aged about 30 years, now detained as “Goonda” at Madurai Central Prison before this Honourable Court and set him at liberty forthwith.

For Petitioner : Mr.R.Alagumani

For Respondents : Mr.A.Thiruvadi Kumar,
Additional Public Prosecutor

ORDER

(Order of the Court was made by ***R.SURESH KUMAR, J.***)

The petitioner is the wife of the detenu. This Habeas Corpus Petition has been filed by her to call for the entire records connected with the detention order of the Respondent No.2 in Cr.M.P.No.36/Goonda/2022 dated 06.08.2022 and quash the same and direct the respondents to produce the body or person of the detenu by name Ganesan, son of Karunanithi, aged about 30 years, now detained as “Goonda” at Madurai Central Prison before this Court and set him at liberty forthwith.



2. Heard Mr.R.Alagumani, learned counsel appearing for the petitioner, who would submit that the detention order has been passed by the respondent detaining authority against the detenu, who is the accused in the ground case, which is a solitary case. Insofar as the detenu is concerned, no bail application had been filed, therefore, detaining authority mainly relied upon the remand report, under which, the detenu has been remanded in the ground case. When they relied upon the remand report, that should have been supplied with Tamil translation as the detenu is not well-versed with the English language.

3. Despite this factor, the remand report, which is one of the relied upon document, since has not been given with the translated copy to the detenu at the time of supplying the paper book, we feel that definitely it would have prejudiced the detenu to make an effective representation. Therefore, we feel that the non-supply of Tamil translation of the remand report, which is a relied upon document, would be fatal to the impugned order of detention.



4. But, at the same time, we wish to clarify the position that, in some cases there would not be any bail application like the present case, where the remand report was a sole document relied upon by the detaining authority, based on which, they might have come to a conclusion to have subjective satisfaction that, he is confined in the judicial custody.

5. But in some cases, apart from the remand report, subsequent bail application might have been filed, where either the bail application could have been pending or the first of such bail application could have been dismissed and there would be likelihood of filing second or third bail application, therefore, the apprehension that, the detenu's likelihood of coming out on bail would be bright.

6. Therefore, in those cases, where bail applications have been filed, the subjective satisfaction would have been based on the relied upon documents i.e., bail application etc., where the remand report cannot be treated as the sole relied upon document and it can only be treated as a referred to document and in those cases non-supply of Tamil translation of remand report may not be a fatal to the detention order.



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7. Whereas in the cases of this nature, where remand report alone has been relied upon mainly, as no bail application has been filed, certainly such a relied upon document i.e., the remand report must have been served with the Tamil translation and non-supply of Tamil translation of such relied upon document / remand report, certainly, would be fatal to the order of detention, therefore, this Court feels that, this Habeas Corpus Petition can be allowed on the aforestated ground.

8. In the result, the Habeas Corpus Petition is allowed. The order of detention passed by the second respondent, in Cr.M.P.No.36 of 2022 dated 06.08.2022, is set aside. Consequently, the detenu, namely, Ganesan, son of Karunanithi, aged about 30 years, who is now detained at Central Prison, Madurai, is directed to be released forthwith unless his presence or custody or detention is required in connection with any other case.

(R.S.K., J.) & (K.K.R.K, J.)
26.04.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
SJ



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R.SURESH KUMAR, J.

AND

K.K.RAMAKRISHNAN, J.

SJ

To

- 1.The Additional Chief Secretary to Government,
State of Tamil Nadu,
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Chennai – 600 009.
- 2.The District Collector and District Magistrate,
Office of the District Collector and District Magistrate,
Sivagangai District,
Sivagangai.
- 3.The Superintendent of Prison,
Madurai Central Prison,
Madurai.
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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