



HCP(MD)No.1964 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 15.03.2023

CORAM

The Honourable Mr. Justice **R.SURESH KUMAR**
and
The Honourable Mr. Justice **K.K.RAMAKRISHNAN**

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Nandhini

.. Petitioner / wife of the
detenu

Vs.

1.The Principal Secretary to Government
Home, Prohibition & Excise Department,
Secretariat,
Fort St. George,
Chennai 600 009.

2.The Commissioner of Police,
Trichy City
Trichy

3.The Inspector of Police,
Ariyamangalam Police Station,
Trichy District.

4.The Superintendent of Prison
Central Prison,
Trichy.

.. Respondents



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Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus to call for the records pertaining to the order of detention passed by the second respondent in his proceedings C.No. 39/Detention/C.P.O/TC/2022 dated 29.03.2022 and quash the same as illegal and produce the detenu namely Asan Ali, S/o.Mohamed Yusuf, aged about 24 years, now he is confined in Central Prison, Trichy, before this Court and set him at liberty.

For Petitioner : Mr.T.Leninkumar

For Respondents : Mr.A.Thiruvadikumar
Additional Public Prosecutor

ORDER

[Order of the Court was made by **R.SURESH KUMAR, J.**]

Challenging the impugned detention order of the 2nd respondent in his proceedings in C.No.39/Detention/C.P.O/TC/2022 dated 29.03.2022 and produce the detenu namely Asan Ali, S/o.Mohamed Yusuf, aged about 24 years, now is confined in Central Prison, Trichy, before this Court, this Habeas Corpus Petition has been filed.



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2. The detenu was arrested in connection with a case in Crime No. 125/2022 on the file of the Ariyamangalam Police Station on 26.02.2022.

The alleged offences in that case was 328 IPC read with 18(c) of Drugs and Cosmetics Act, 1940 and Section 77 of Juvenile Justice (Care and Protection of Children) Act, 2015. Therefore, the sponsoring authority had sent a report to the detaining authority, which was taken into account and considered by the detaining authority, who decided to slap the provisions of Act 14 of 1982 against the detenu by thus, on 29.03.2022, the order of detention was passed by declaring the detenu as 'drug offender'.

3. Challenging the said order of detention dated 29.03.2022, Mr.T.Leninkumar, learned counsel for the petitioner, has raised the following points:

(i) In the grounds of detention, the detaining authority has stated that the detenu had filed the bail application in respect of the ground case as well as in the adverse case, which is pending in the same police station in Crime No.125/2022 for the alleged offences under Sections 328, 18(c) of the Drugs and Cosmetics Act and 77 of Juvenile Justice (Care and Protection of Children) Act, 2015. Thus, the bail applications filed three times one in



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respect of Crime No.125/2022 and two in respect of Crime No.170/2022 and those bail applications were dismissed by the concerned Court, ie., the Principal District and Sessions Judge, Trichy;

(ii) These dismissal orders of bail applications, having been taken note of/relied upon by the detaining authority and has come to the conclusion that the detenu may file further bail application and he would be likely to be released on bail by the Court concerned. Therefore, in order to prevent his release from detention, the detaining authority, having the subjective satisfaction on these materials, had come to the conclusion that the detenu has to be detained under the provisions of the Act 14 of 1982;

(iii) In this context, it is the contention of the learned counsel for the petitioner that those three bail applications as well as the rejection of bail orders, having been relied upon by the detaining authority and those documents, even though have been furnished in the paper booklet, the English version of those documents, alone were furnished to the detenu, though the detenu does not know English language. This is the first ground raised by the petitioner's side;

(iv) the second ground raised by him was that, the detaining authority has stated that in a case where in CrI.M.P.No.811/2022 in Crime No.



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190/2022 registered on the file of the Cantonment Police Station at Trichy, bail was granted to one of the accused, viz., Gokul and therefore, the detaining authority drew inference from the said bail order and had come to the conclusion that a further bail application is filed by the detenu that would be considered by the Court concerned and he would be released on bail. Therefore, that might have influenced the mind of the detaining authority to have a subjective satisfaction and therefore, in this context, it is the contention of the petitioner counsel that even the said bail order granted in similar case also was furnished only in English and no Tamil translated version is given;

(v) He would also submit that the case, which was referred by the detaining authority, though seems to be a similar case, is not a similar case exactly and there are lot of difference between the case, ie., the ground case against the detenu as well as the similar case referred by the detaining authority; and

(vi) Thirdly, the learned counsel for the petitioner would submit that even though Tamil translated version of these documents were sought for through the representation filed by the detenu on 15.11.2022 that has not been considered and no translated copy has been given. Therefore, the



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chance of giving effective representation on behalf of the detenu, since has been hampered, that is the one of the ground raised by the learned counsel for the petitioner.

4. In support of these grounds raised by the learned counsel for the petitioner, he has cited the judgments of the Division Bench of this Court reported in **(2007) 1 MLJ CrL. 18** in HCP No.158/2006 and CMP No. 14/2006 in the matter of **Jerina Begum v. State of Tamil Nadu and others.**

5. Expanding his argument further by relying upon the said judgment, the learned counsel strenuously referred to Paragraph 6 of the judgment and argues that if the bail application was actually placed before the detaining authority and on that basis, the detaining authority came to the conclusion that the detenu was likely to be released on bail, such document being a relied upon document should have been furnished to the detenu and non furnishing of such documents or non furnishing of the translated version of the bail application or order of rejection of the bail application of the detenu in the earlier occasion of the same case, would be fatal to the detention order. Therefore, the said proposition, as has been stated in Paragraph No.6



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of the said judgment, since having been relied upon by the learned counsel for the petitioner, is pressed for indulgence of this Court against the impugned order.

6. As a last point, he has also submitted that he has only the bail order and the order passed in such bail application in respect of the detenu's case has been furnished only in English Language, but also the bail order granted in favour of another person in the similar case also has been furnished only in English and therefore, these documents, which are crucial, according to the learned counsel, certainly would make prejudice to the detenu to make an effective representation within the meaning of Article 22(5) of the Constitution of India. Therefore, for all these grounds, the learned counsel seeks indulgence of this Court against the impugned detention order.

7. However, Mr.A.Thiruvadikumar, learned Additional Public Prosecutor would rely upon number of judgments, which we would consider later on, and submitted that, insofar as the grounds urged by the petitioner side that the bail application as well as the bail order, since have been furnished only in English and not in vernacular, therefore, that would cause



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prejudice to the detenu is concerned, all those documents are referred documents and they were not relied upon solely by the detaining authority to have his subjective satisfaction. He would also submit that, insofar as those documents are concerned, the non supply of those documents or supplying of English version and non supply of Tamil translated version of those documents whether actually cause prejudice to the detenu to make an effective representation, is the matter to be decided by the Court in each case.

8. The learned Additional Public Prosecutor would also submit that insofar as the similar case theory that has also been questioned by the petitioner's side is concerned, the Court has already held that similar case means the case pertaining to a similar offence but it need not necessarily be with same overt act in similar factual matrix and therefore, the plea raised on behalf of the petitioner that the similar case is not actually similar also would not hold any weightage, he contended. The learned Additional Public Prosecutor has relied upon the following judgments in support of his contentions:

(i) 1992 SCC (Crl) 1 in the matter of Abdul Sathar Ibrahim Manik v.



Union of India and others, where he relied upon the following:

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Having regard to the various above-cited decisions on the points often raised we find it appropriate to set down our conclusions as under:

(1) A detention order can validly be passed even in the case of a person who is already in custody. In such a case, it must appear from the grounds that the authority was aware that the detenu was already in custody.

(2) When such awareness is there then it should further appear from the grounds that there was enough material necessitating the detention of the person in custody. This aspect depends upon various considerations and facts and circumstances of each case. If there is a possibility of his being released and on being so released he is likely to indulge in prejudicial activity then that would be one such compelling necessity to pass the detention order. The order cannot be quashed on the ground that the proper course for the authority was to oppose the bail and that if bail is granted notwithstanding such opposition the same can be questioned before a higher Court.

(3) If the detenu has moved for bail then the application and the order thereon refusing bail even if not placed before the detaining authority it does not amount to suppression of relevant material. The question of non-application of mind and satisfaction being impaired does not arise as long as the detaining authority was aware of the fact that the detenu was in actual custody.

(4) Accordingly the non-supply of the copies of bail application or the order refusing bail to the detenu cannot affect the detenu's right of being afforded a reasonable opportunity guaranteed under [Article 22\(5\)](#) when it is clear that the authority has not relied or referred to the same. (5) When the detaining authority has merely referred to them in the



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narration of events and has not relied upon them, failure to supply bail application and order refusing bail will not cause any prejudice to the detenu in making an effective representation. Only when the detaining authority has not only referred to but also relied upon them in arriving at the necessary satisfaction then failure to supply these documents, may, in certain cases depending upon the facts and circumstances amount to violation of [Article 22\(5\)](#) of the Constitution of India. Whether in a given case the detaining authority has casually or passingly referred to these documents or also relied upon them depends upon the facts and the grounds, which aspect can be examined by the Court.

...

In the counter-affidavit, it is stated that the period of remand to the judicial custody was to expire the next day after his detention. Therefore there was every likelihood of his moving for bail and getting released on bail. These materials show that the detaining authority was not only aware that the detenu was in jail but also noted the circumstances on the basis of which he was satisfied that the detenu was likely to come out on bail and continue to indulge himself in the smuggling activities. It, therefore, cannot be said that there were no compelling reasons justifying the detention despite the fact that the detenu is already in custody. Likewise the failure to supply the bail application and the order refusing bail does not in any manner prejudice the detenu from making a representation particularly when he was fully aware of the contents of application made by himself and also the refusal order. However, when they are not referred to or relied upon the non supply does not affect the detention.

(ii) 2002(10) SCC 448 (Sitthi Zuraina Begum v. Union of India (UOI)

and others.) ;



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(iii) (2009) 1 SCC 333 (State of Tamil Nadu and Another v. Abdullah Kadher Batcha and another);

(iv) The order passed by the Division Bench of this Court in HCP No. 1599/2007 dated 03.04.2008 in the matter of Thiru.Velu, S/o.Arumugam v. State of Tamil Nadu and another;

(v) Yet another judgment referred by him is 1991 CrLJ 1508 in the case of M.Govinda Gounder and another v. The Government of Tamil Nadu and others and

(vi) Further a judgment of a Division Bench of this Court dated 10.01.2007 in HCP No.373/2006 in the matter of M.Rakku, W/o. Muniyandi v. State and another also has been relied upon by the learned Additional Public Prosecutor.

9. By relying upon these judgments, the learned Additional Public Prosecutor would submit that in view of the said proposition that have been settled, as has been culled out in these cases, the grounds that have been raised on behalf of the petitioner are to be rejected and therefore, the learned Additional Public Prosecutor wants the impugned detention order to be sustained.



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10. We have given our anxious consideration to the rival submissions made by the learned counsel for the parties and have perused the materials placed before this Court.

11. Though four grounds have been raised to assail the impugned detention order on behalf of the petitioner, the sum and substance of these grounds, since are interrelated one and the factor as to whether the documents namely, the three bail applications and the rejection orders in respect of the cases pertaining to the detenu as well as the bail orders granted in a similar case are related documents, if so the non supply of Tamil translated version of those documents would be fatal to the impugned detention order is the only question to be tested in this case.

12. In this context, the courts have already taken views, of course, consistently, which have been followed in the subsequent cases many a times. The first case, ie., 1992 SCC (Cr1) 1 is concerned, the Court set down certain principles out of which the one principle is that the non supply of the copies of bail application or the order refusing bail to the detenu or



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documents if relied upon may affect a reasonable opportunity guaranteed under Article 22(5) of the Constitution of India, however, when the authority has not relied or referred those document, it does not affect the detenu.

13. In the same judgment, the Hon'ble Supreme Court has further held that, it cannot be, therefore said that, there were compelling reasons justified the detention despite the detenu is also in custody, the non supply of the bail application and the order refusing bail does not in any manner prejudice the detenu from making a representation particularly when he was fully aware of the contents of the application made by himself and also refusal order. However, when they are not referred to or relied upon the non supply does not affect the detention.

14. In this context, we must also look into the judgment of the Division Bench of this Court in Velu, S/o.Arumugam, cited supra, wherein in paragraph 10 of the said order, the Division Bench has held as follows:

“10. In fact, after having considered the judgment in M.Ahmedkutty's case and in Abdul Sathar Ibrahim Manik's case,



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a Division Bench of the Madurai Bench of this Court (one of us was a party) in the judgment in *M.Rakku v. Secretary to the Government, State of Tamil Nadu, Prohibition and Excise Department and another* (2007) 2 MLJ (Crl.) 269 has also held that the detenu has to prove that the non-supply of the documents placed before the detaining authority has adversely affected his right to make an effective representation. In this case, the application for grant of bail was earlier dismissed by the learned Sessions Judge and as against that, an application for bail was filed before this Court and the same was pending. The contents of the copy of the application were within the knowledge of the detenu and therefore the non-supply of the said copy will not cause any prejudice to the detenu. As far as the forming of subjective satisfaction by the detaining authority is concerned, it would be sufficient that the detaining authority was aware of the fact that the application for bail was pending and there is every possibility of the detenu coming out on bail.”

15. The point that has been taken into consideration and was held by the Division Bench is that, the application for grant of bail was earlier dismissed by the Sessions Judge and as against that an application for bail was filed before this Court and the same was pending therefore, the contents



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of the copy of the application were within the knowledge of the detenu and therefore, the non supply of the said copy will not cause any prejudice to the detenu. As far as the factum of subjective satisfaction arrived at by the detaining authority is concerned, it would be sufficient that the detaining authority was aware of the fact that the application for bail was pending and there is every possibility of the detenu coming out on bail.

16. Like that in 2002(10) SCC 448, in *Sitthi Zuraina Begum v. Union of India (UOI) and others*, (supra), the Apex Court has held as follows:

“6.Next ground urged by the learned counsel for the detenu is that he had studied only upto 5th class and he does not know English language at all and the document annexed to detention order was not translated in Tamil. In this context, the learned counsel for detenu relied upon the decision of this Court in *M. Ahamedkutty vs. Union of India & Anr.*, 1990 (2) SCC 1, that even if the document was within the knowledge of the detenu, the same had to be served upon him. He further relied upon the decision of this Court in *Powanammal vs. State of T.N. & Anr.*, 1999 (2) SCC 413, to the effect that the serving of document in English would not be an effective compliance with the provisions of [Article 22](#) of the Constitution and the documents had to be translated. He submitted that that was a document (document at page No. 13) which pertains to the declaration filed by him. It is the stand of the respondents that it was a customs declaration card filled up by the detenu himself and, therefore, he was aware of the contents of the said declaration and he had



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also stated in the course of his statement before the authorities that he had filled up such a card. It is not the case of the detenu that the said document was not furnished by him. The said declaration which had been filled by the detenu himself was furnished to him but the translation thereof was not given to him. The grievance of the appellant is that Tamil translation of the said document was not given to him. However, when the said document had been filled by the detenu himself wherein he made some entries, non-furnishing of Tamil translation of the same would not result in any non-compliance of a document of which he had no knowledge. If he had made a declaration and same is supplied to him, we do not think that the same can be treated as non- furnishing of a document or furnishing of a document the translation of which is needed. Therefore, the two decisions on which the learned counsel for the detenu has placed reliance will be of no assistance to him.”

17. Where also a similar circumstance was confronted by their Lordships, where it has been held that it is not a case of the detenu that the said document was not furnished by him. The said declaration, which has been filled in by the detenu, was furnished to him but the translation thereof was not given to him. The grievance of the detenu is that Tamil translated version of the document was not given to him, however, when the said documents have been filled by the detenu himself, it would not result in non supply of the document of which, he has no knowledge, if he had made a



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declaration and the same is supplied to him, we do not think that the same has been treated as non furnishing of the documents.

18. These three propositions, which have been referred to above and discussed herein, would make it clear that under what circumstances the documents being supplied to the detenu should be in vernacular ie., the known language of the detenu or if those documents are not at all supplied, ought to have been supplied. Insofar as either non supply or supplying of English version, Tamil translation of bail application as well as the rejection of bail orders are concerned, first of all those documents are emanated only from the detenu or on behalf of him. The detenu is believed to have the knowledge about the filing of the bail application, after application for seeking bail filed in the ground case as well as in the adverse case and those applications, since have been rejected, then only the subsequent applications had been filed. Only this has been referred by the detaining authority in the grounds of detention order, where he has narrated the fact that in respect of adverse case, one bail application was filed that was rejected and in respect of ground case all applications for bail were filed and were rejected. Therefore, any reasonable man can come to the conclusion that further bail



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application would naturally be filed on behalf of the detenu and no one can prevent the detenu or on his behalf to file any such bail application. To have such a knowledge, even though no bail application was filed on behalf of the detenu, such a subjective satisfaction can reasonably be reached by the detaining authority based on the circumstances of the case, because the right of seeking bail is always vest with the detenu or the person, who have been confined in judicial custody in any criminal case. Therefore, citing on those facts that three applications for bail having been filed were rejected, first of all, can only be treated as narration. Therefore, it cannot be treated as a reliance or that has been relied upon mainly for having the subjective satisfaction of the detaining authority.

19. Assuming that those documents were relied upon by the detaining authority, still the non supply of Tamil translated version of those documents whether would be fatal to the detention order is the next question which has been squarely answered by the aforestated judgments, where this has been very clear that insofar as non supply of bail application as well as rejection of bail orders are concerned, they were not prejudicial to the detenu to have an effective representation. That apart insofar as the non



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supply of bail applications or the rejection order or supply of English version of those documents are concerned, it must be looked into as to whether those documents are relevant which could cause prejudice to the interest of the detenu for making effective representation.

20. This has been completely answered by the Hon'ble Supreme Court in the State of Tamil Nadu and Another v. Abdullah Kadher Batcha and another, (cited supra), where the Court has held as follows:

“7. The court has a duty to see whether the non-supply of any document is in any way prejudicial to the case of the detenu. The High Court has not examined as to how the non-supply of the documents called for had any effect on the detenu and/or whether the non-supply was prejudicial to the detenu. Merely because copies of some documents have (*sic* not) been supplied, they cannot by any stretch of imagination be called as relied upon documents. While examining whether non-supply of a document would prejudice a detenu, the court has to examine whether the detenu would be deprived of making an effective representation in the absence of a document. Primarily, the copies which form the ground for detention are to be supplied and non-supply thereof would prejudice the detenu. But documents which are merely referred to for the purpose of narration of facts in that sense cannot be termed to be documents without the supply of which the detenu is prejudiced.”



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21. The Court has held that it is the duty of the Court to see whether non supply of any document is in any way prejudicial to the case of the detenu. Merely because copies of some documents have not been supplied, that cannot be at any stretch of imagination be called as relied upon documents. While examining whether non supply of a document would prejudice the detenu, the Court has to examine whether the detenu would be deprived of making effective representation in the absence of a document. Primarily, the copies, which form the ground for detention, are to be supplied and non supply thereof would prejudice the detenu. But documents, which are merely referred to for the purpose of narration of facts in that sense cannot be termed to be documents without the supply of which the detenu is prejudiced. Applying the said ratio to the facts of the present case, as we have already opined, first of all the documents are concerned, which are used only for the purpose of narration of facts by the detaining authority, therefore, not by relying upon those documents, based on sole criteria of those documents, the detaining authority cannot be said to have come to subjective satisfaction to the conclusion that the detenu has to be slapped with the provisions of Act 14 of 1982.



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22. Coming to the ground case that has been raised by the learned counsel for the petitioner with regard to the similar case theory is concerned, the Court has already held that as to how the similar case theory has to be looked into. In this context, a Division Bench judgment of this Court in *Mariappan v. District Collector and District Magistrate* dated 18.08.2014, at Paragraph 72 has held as follows:

“72.Though the detaining authority has used the expression, "similar cases, the court is conscious of the fact that there cannot be similarity or same set of facts. Similar cases, therefore in the humble opinion of this court, should be meant, similar offences, and it cannot be expected to have the same set of facts, with same overtacts against the accused involved.”

23. Therefore, it has been the decision of the Division Bench that the similar case, in the humble opinion of this Court, should be made similar offences and it cannot be expected to have the same set of facts with same overt acts against the accused involved. If that being so, insofar as similar case theory are being engineered by the detaining authority is concerned, it is not necessarily to be with same set of facts, provided, if it is for the same offence, certainly that can be taken into account as a similar case. The likelihood of granting bail in the ground case of the detenu is concerned, it



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would be a logical conclusion, which any reasonable person can come.

Therefore, such a reasoning given by the detaining authority by citing a similar case theory is only for the purpose of arriving at such a conclusion that in the present case also, the detenu may seek for bail and he might be likely to be enlarged on bail. If that satisfaction is expressed by the detaining authority, the Court cannot expect in that similar case also same set of facts must be there without which a similar case theory cannot be invoked by the detaining authority. If that proposition is invoked by the Court, then, the apprehension on the part of the detaining authority based on the similar case theory can never be formed as there can be no similarity of facts in two cases except in rare occasion.

24. Insofar as the last ground raised by the learned counsel for the petitioner that being the similar case bail order, which has been cited as a document in the paper book also in English and not in Tamil is concerned, the principle as has been relied upon in the cases cited supra would clearly apply to this case also as the detenu would not have provided, however such document if it has to be in English such a conclusion alone can be arrived by us by applying the aforesaid principles enunciated in the judgment cited



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supra. Moreover, in the representation dated 15.11.2022, given by the petitioner, which, in fact, is the second representation as the first representation as contemplated under Article 22(5) of the Constitution of India having been given on behalf of the detenu, which was considered and rejected by the authority concerned ie, the State Government, the petitioner has stated that the bail application filed and the order refusing the bail in respect of two crime numbers ie., 125/2012 that is the previous case and 170/2012 that is the ground case are noted, therefore, the petitioner, who made this representation second time on 15.11.2022 is aware of the fact about such reason given either as a relied one or narration of fact in the grounds of detention.

25. Therefore, having knowledge over the same and also at Paragraph 5 of the representation, it has further been stated that the petitioner's husband ie., the detenu knew only Tamil but at Paragraph 2, the import of the documents referred in the grounds of detention, having been understood by the petitioner, such a representation, since has been given even that prejudice seems to have not been available for the detenu or the petitioner and therefore, that plea raised by the petitioner's side that would cause



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prejudice if the documents referred are not supplied in Tamil Vernacular
also would not have legs to stand.

26. Therefore, all the grounds raised by the petitioner's side attacking the order of detention, which are impugned herein, are untenable for the aforesaid reasons. Hence, we have no hesitation to hold that the impugned detention order would stand in the legal scrutiny. Hence, it is to be sustained. Resultantly, the Habeas Corpus Petition is to be dismissed, accordingly, it is dismissed.

(R.S.K.,J.) (K.K.R.K.,J.)
15.03.2023

Index : Yes/No
Internet : Yes
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To

1. The Principal Secretary to Government
Home, Prohibition & Excise Department,
Secretariat,
Fort St. George,
Chennai 600 009.
2. The Commissioner of Police,
Trichy City
Trichy
3. The Inspector of Police,
Ariyamangalam Police Station,
Trichy District.
4. The Superintendent of Prison
Central Prison,
Trichy.
5. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.



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and
K.K.RAMAKRISHNAN,J.

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