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HCP.No.73 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.03.2024

CORAM :

THE HONOURABLE MR. JUSTICE M.S. RAMESH
AND
THE HONOURABLE MR. JUSTICE SUNDER MOHAN

H.C.P.No.73 of 2024

Jayasree Venkatesan

... Petitioner/wife of the detenu

Vs.

1.State of Tamilnadu,
Rep. by Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George, Chennai-600 009.

2.The Commissioner of Police,
Office of Commissioner,
Salem District,
Salem-636 006.

3.The Superintendent of Prison,
Central Prison,
Salem-636 007.

4.The Inspector of Police,
Shevapet Police Station,
Shevapet,
Salem-636 002.

... 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 records in detention order passed in Memo No.C.M.P.No.105/Goonda/SALEM CITY/2023 order dated 28.11.2023 on the file of the second respondent herein and set aside the same and direct the respondent to produce the detenu i.e., the body or in person of Venkatesan, S/o.Ayyavu, Male, aged about 56 years, the detenu detained under Act, 14 of 1982 in detention order Memo No.C.M.P.No.105/Goonda/SALEM CITY/2023 herein now confined at Central Prison, Salem, Tamil Nadu, before this Court and set him at liberty.

For Petitioner : Mr.V.Purushothaman Reddy

For Respondents : Mr.E.Raj Thilak
Additional Public Prosecutor
assisted by Mr.C. Aravind

ORDER

M.S.RAMESH, J.
AND
SUNDER MOHAN, J.

The petitioner herein is the wife of the detenu viz., Venkatesan, S/o.Ayyavu, aged about 56 years, confined at Central Prison, Salem, Tamil Nadu, has come forward with this petition challenging the detention order passed by the second respondent dated 28.11.2023 slapped on her husband, branding him as "Goonda" under the Tamil Nadu Prevention of



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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, as well as the learned Additional Public Prosecutor appearing for the respondents.

3. Though several grounds were raised by the petitioner, the detention order is liable to be quashed on the following grounds:

(a) Page 8 of the booklet furnished to the detenue is illegible.

(b) The translation order in CrI.M.P.No.3447 of 2023, where the petitioner's application for bail was dismissed, is improper. Inasmuch as in the bail order, the offences mentioned are 341, 392, 397 and 506(ii) IPC, whereas in the translated copy, the offences are shown as 341, 392, 506 and 397(ii) IPC.

4. In view of the above, we are of the view that the detenue's right to make an effective representation is denied.



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5. In this regard, the following observation of Hon'ble Supreme Court made in '*Powanammal Vs. State of Tamil Nadu*' reported in '*(1999) 2 SCC 413*' may be relevant. 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 being communicated the grounds and of being afforded the opportunity of making an effective representation against the order. But it would



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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.”*

6. 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.



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7. Hence, for the aforesaid reasons, the detention order passed by the second respondent on 28.11.2023 in C.M.P.No.105/Goonda/SALEM CITY/2023 is hereby set aside and the Habeas Corpus Petition is allowed. The detenu viz., Venkatesan, S/o.Ayyavu, aged about 56 years, confined at Central Prison, Salem, Tamil Nadu, is directed to be set at liberty forthwith, unless he is required in connection with any other case.

[M.S.R., J]

[S.M., J]

27.03.2024

Index: Yes/No

Neutral Citation: Yes/No

Anu

To

1.The Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George, Chennai-600 009.

2.The Commissioner of Police,
Office of Commissioner,
Salem District,
Salem-636 006.

3.The Superintendent of Prison,
Central Prison,
Salem-636 007.



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4.The Inspector of Police,
Shevapet Police Station,
Shevapet,
Salem-636 002.

5.The Joint Secretary,
Law and Order Department,
Secretariat, Chennai

6.The Public Prosecutor,
High Court, Madras.



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and
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