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HCP.No.167 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.03.2024

CORAM :

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

H.C.P.No.167 of 2024

N.Jamuna

... Petitioner

Vs.

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

2.The State of Tamil Nadu,
Rep. by the Commissioner of Police,
Greater Chennai,
Office of the Commissioner of Police,
(Goondas Section), Vepery,
Chennai – 600 007.

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

4.The Inspector of Police,
K-1, Sembium Police Station,
Chennai – 600 011.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to
issue a Writ of Habeas Corpus, calling for the entire records relating to the



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impugned order of detention passed by the 2nd respondent in No.554/BCDFGISSSV/2023, dated 07.11.2023 and set aside the same and consequently direct the respondents to produce the detenu Chera @ Cheraman, petitioner's son, now confined at Central Prison, Puzhal, Chennai, before this Court and set him at liberty.

For Petitioner : Mr.J.Prakash

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, who is the mother of the detenu Chera @ Cheraman, aged about 25 years, S/o.Nagalingam, has come forward with this petition challenging the detention order passed by the second respondent dated 07.11.2023 slapped on her son, branding him as "Goonda" 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].



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2. Heard the learned counsel for the petitioner, as well as the learned Additional Public Prosecutor appearing for the respondents.

3. Though several grounds are raised in the petition, the learned counsel for the petitioner submitted that the order of Detention passed by the Detaining Authority is vitiated for material irregularities, as the copy of the bail order in the similar case relied upon by the Detaining Authority, i.e., CrI.M.P.No.19403 of 2023 dated 08.08.2023, has not been fully translated in English. He would also submit that the similar case number mentioned in the grounds of detention and the order copy available in the booklet does not match. It is therefore stated that the detenu is deprived of his valuable right to make effective representation.

4. Though it is seen from the Grounds of Detention that the Detaining Authority has relied upon a similar case in CrI.M.P.No.19530 of 2023, on a perusal of the Booklet, this Court finds that the English version of the bail order in the similar case relied upon by the Detaining Authority furnished is CrI.M.P.No.19403 of 2023 and the Tamil version furnished is CrI.M.P.No.19043 of 2023. It is further seen that the English version of



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the bail order is not fully translated. Therefore, this Court is of the view that the non-furnishing of the proper copy of the vital document relied upon by the Detaining Authority to arrive at a subjective satisfaction that the detenu is likely to be released on bail, would deprive the detenu of his valuable right to make effective representation. It is in the said circumstances, this Court finds that the Detention Order passed by the Detaining Authority is vitiated.

5. 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, 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



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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*



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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.

7. Accordingly, the detention order passed by the second respondent on 07.11.2023 in No.554/BCDFGISSSV/2023, is hereby set aside and the Habeas Corpus Petition is allowed. The detenu viz., Chera @ Cheraman, aged about 25 years, S/o.Nagalingam, is directed to be set at liberty forthwith, unless his confinement is required in connection with any other case.

[M.S.R., J]

[S.M., J]

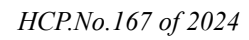
20.03.2024

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5.The Public Prosecutor, High Court, Madras.



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