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HCP.No.101 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.02.2024

CORAM :

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

H.C.P.No.101 of 2024

Elumalai

... Petitioner

Vs.

- 1.State of Tamil Nadu,
Rep. by its Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai – 600 009.
- 2.The District Collector and District Magistrate,
Cuddalore District, Cuddalore.
- 3.The Superintendent of Police,
Cuddalore District, Cuddalore.
- 4.The Inspector of Police,
Muthandikuppam Police Station,
Cuddalore District.
- 5.The Superintendent,
Central Prison, Cuddalore.

... 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



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petitioner's friend detention under Tamil Nadu Act 14 of 1982 vide detention order, dated 17.08.2023 on the file of the second respondent herein made in proceedings C3/D.O./46/2023 and quash the same as illegal and consequently direct the respondents herein to produce the petitioner's friend namely Mampazham @ Ashokraman, aged about 26 years, S/o. Jayaraman, before this Court and set him at liberty, now petitioner's friend detained at Central Prison, Cuddalore.

For Petitioner	: Mr.C.C.Chelliappan
For Respondents	: Mr.A.Gokulakrishnan, Additional Public Prosecutor assisted by Mr.C. Aravind

ORDER

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

The petitioner herein, who is the friend of the detenu namely Mampazham @ Ashokraman, aged about 26 years, S/o. Jayaraman, has come forward with this petition challenging the detention order passed by the second respondent dated 17.08.2023 slapped on his friend, branding him as "Goonda" under the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Cyber Law Offenders, Drug Offenders, Forest Offenders,



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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 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 remand order has not been properly translated in English. It is therefore stated that the detenu is deprived of his valuable right to make effective representation.

4. On a perusal of the Booklet, particularly in page Nos.31 & 32, this Court finds that the copy of the remand order is placed in Tamil and English. However, some facts in the English translated copy differ from the Tamil version. It is seen that in the Remand Order (English copy), the detenu was in custody for 12 days and his age is mentioned as 26 years, however, in Tamil copy, the days in custody is mentioned as 15 and his age



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is mentioned as 43 years. Therefore, this Court is of the view that the improper translation of the copy of the vital document relied upon by the Detaining Authority to arrive at a subjective satisfaction, 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 upon by the detaining authority in the grounds



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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,



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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.

7. Hence, for the aforesaid reasons, the detention order passed by the second respondent on 17.08.2023 in C3/D.O./46/2023, is hereby set aside and the Habeas Corpus Petition is allowed. The detenu viz., Mampazham @ Ashokraman, aged about 26 years, S/o. Jayaraman, 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]

27.02.2024

Index: Yes/No

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Neutral Citation: Yes/No

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Central Prison, Cuddalore.
 - 6.The Public Prosecutor,
High Court, Madras.



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