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H.C.P.No.226 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 26.03.2024

CORAM:

THE HONOURABLE MR. JUSTICE M.S.RAMESH

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

H.C.P.No.226 of 2024

Chitra

...Petitioner/Mother of the Detenu

Vs.

1.State of Tamil Nadu,
Rep.by
The Secretary to Government,
Home, Prohibition Excise Department,
Fort St.George,
Chennai – 600 009.

2.The Commissioner of Police,
Greater Chennai,
Vepery, Chennai – 600 007.

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

4.The Inspector of Police,
V-1, Villivakkam Police Station,
Kancheepuarm District.

...Respondents



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Petition filed under Article 226 of the Constitution of India, praying to issue Writ of Habeas Corpus to call for the records pertaining to the order of detention passed in No.566/BCDFGISSSV/2023 dated on 09.11.2023 passed by the second respondent and set aside the same and directing the respondents to produce the petitioner's son by name Surya son of Chittibabu aged about 22 years before this Court now confined in Central Prison, Chennai and set him at liberty.

For Petitioner : M/s.S.Krishnamoorthy

For Respondents : Mr.E.Raj Thilak

Additional Public Prosecutor

Assisted by Aravind.C

ORDER

M.S.RAMESH, J.

and

SUNDER MOHAN, J.

The petitioner herein, who is the mother of the detenu, viz., Surya, aged about 22 years, S/o.Chittibabu, has come forward with this petition challenging the detention order passed by the second respondent, dated 09.11.2023, 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 and the learned

Additional Public Prosecutor appearing for the respondents.

3. Though several grounds were raised by the learned counsel for the petitioner, it is stated that the detention order is liable to be quashed on the sole ground that the arrest memo was not found in the booklet.

4. The booklet accompanying the grounds of detention was furnished to the detenu, and though the index refers to the enclosure of an arrest memo at Page No.36, it is seen that Page no.36 is a blank page. Therefore, the arrest memo has not been supplied to the detenu. In our view, the non-supply of the said document would deprive the right of the detenu to make effective representation against the order of detention.

5. The non-supply of a document which is relied upon by the prosecution is fatal to the detention order as held by the Hon'ble Supreme Court in ***Powanammal Vs. State of Tamil Nadu*** reported in ***(1999) 2 SCC 413***. The relevant observations read 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 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



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is required to be detained in any other case. The appeal is accordingly allowed.”

6. Thus, the detention order is vitiated on the ground of non furnishing of the arrest memo and hence, the same is liable to be quashed.

7. Accordingly, the detention order passed by the second respondent dated 09.11.2023 in No.566/BCDFGISSSV/2023, is hereby set aside and the Habeas Corpus Petition is allowed. The detenu viz.,Surya S/o.Chittibabu, aged about 22 years, 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.)
26.03.2024

Internet : Yes
Index : Yes / No
Neutral Citation : Yes / No
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To

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2.The Commissioner of Police
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5.The Public Prosecutor,
High Court of Madras, Madras.
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