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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.07.2024

CORAM :

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

H.C.P.No.664 of 2024

Karthik .. Petitioner/
Brother of the detenue

Versus

1. The Secretary to the Government,
   Home Prohibition and Excise Dept.,
   Secretariat, Chennai - 600 009.

2. The Commissioner of Police,
   Tambaram City.

3. The Superintendent of Prison,
   Central Prison, Vellore.

4. The Inspector of Police,
   T-11, Somangalam Police Station,
   Tambaram City. .. Respondents

Prayer : Habeas Corpus Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Habeas Corpus, to call for the records in connection with the order of detention passed by the second respondent 04.03.2024 in BCDFGISSSV No.29/2024 against the petitioner brother E.Keerthi, Male, aged 22 years, S/o.Ellappan, who is confined at

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Central Prison, Vellore and set aside the same and direct the respondents to produce the detenue before this Court and set him at liberty.

For Petitioner : Mr.D.Balaji

For Respondents : Mr.A.Gokulakrishnan,
Additional Public Prosecutor

ORDER

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

The petitioner herein, who is the brother of the detenue namely E.Keerthi, S/o.Ellappan, aged 22 years, detained at Central Prison, Puzhal, Chennai has come forward with this petition challenging the detention order passed by the second respondent dated 04.03.2024 slapped on his brother, 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].

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

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3. Though the learned counsel for the petitioner has raised several other grounds to assail the order of detention, he has mainly focused his argument on the ground that the Government Order in G.O.(D).No.19, Home, Prohibition and Excise (XVI) Department dated 10.01.2024 has not been translated in vernacular language. This deprived the detenue from making effective representation. Therefore, on the sole ground, the detention order is liable to be quashed.

4. On perusal of the documents available on record, especially Page Nos.97 and 99 of the booklet, it is clear that the Government Order in G.O.(D).No.19, Home, Prohibition and Excise (XVI) Department dated 10.01.2024 has not been translated in vernacular language. Therefore, the detenue is deprived from making effective representation and 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

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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 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*

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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.

7. Hence, for the aforesaid reasons, the detention order passed by the second respondent on 04.03.2024 in BCDFGISSSV No.29/2024, is hereby set aside and the Habeas Corpus Petition is allowed. The detenue viz., E.Keerthi, S/o.Ellappan, aged 22 years, now detained at Central Prison,

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Puzhal, Chennai 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]
04.07.2024

Index : yes/no
Speaking order/Non-speaking order
Neutral Citation : yes/no
grs

To

1. The Secretary to the Government,
   Home Prohibition and Excise Dept.,
   Secretariat, Chennai - 600 009.

2. The Commissioner of Police,
   Tambaram City.

3. The Superintendent of Prison,
   Central Prison, Vellore.

4. The Inspector of Police,
   T-11, Somangalam Police Station,
   Tambaram City.

5. The Public Prosecutor,
   High Court of Madras.

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