



WEB COPY



H.C.P.No.747 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.07.2024

CORAM :

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

H.C.P.No.747 of 2024

S.Selvi

.. Petitioner/
Mother of the detenue

Versus

1. The Secretary to the Government,
Home, Prohibition & Excise (XVI) Department,
Secretariat,
Chennai - 600 009.
 2. The Commissioner of Police,
O/o. Commissioner of Police,
Greater Chennai.
 3. The Superintendent of Prison,
Central Prison Puzhal,
Chennai District.
 4. The Inspector of Police,
PEW Anna Nagar Police Station,
Chennai District.
- .. Respondents

Prayer : Habeas Corpus Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Habeas Corpus, calling for the entire records connected with the detention order in BCDFGISSSV



H.C.P.No.747 of 2024

No.37/2024, dated 18.01.2024 on the file of the respondent No.2 and quash the same and direct the respondents to produce the body and person of petitioner's son one named Mr.AGASTIN @ KANDU, S/o.CHARLES aged about 29 years now confined at Central Prison, Puzhal before this Court and set him at liberty forthwith.

For Petitioner : Mr.P.Muthamizhselvakumar

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

ORDER

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

The petitioner herein, who is the mother of the detainee namely Agastin @ Kandu, S/o.Charles, aged about 29 years, detained at Central Prison, Puzhal, has come forward with this petition challenging the detention order passed by the second respondent dated 18.01.2024 slapped on her son, branding him as "Drug Offender" 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].



H.C.P.No.747 of 2024

WEB COPY

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 Section 161(3) Cr.P.C., statement of Dr.Vinoth.K.V, Associate Professor of Forensic Medicine, Government Kilpauk Medical College and Hospital, Chennai, has not been properly translated. It is therefore stated that the detainee is deprived of his valuable right to make effective representation.

4. On a perusal of the Booklet, particularly in page No.101, this Court finds that the copy of the Section 161(3) of Cr.P.C., statement of the Associate Professor of Forensic Medicine, was in Tamil, however, some portion of the statement is in English and the same is not translated in Tamil. 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 detainee of his valuable



H.C.P.No.747 of 2024

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 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



WEB COPY



H.C.P.No.747 of 2024

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



H.C.P.No.747 of 2024

WEB COPY

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 18.01.2024 in No.37/BCDFGISSSV/2024, is hereby set aside and the Habeas Corpus Petition is allowed. The detenue viz., Agastin @ Kandhu, S/o.Charles, aged about 29 years, now detained at Central Prison, Puzhal, 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]
12.07.2024

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

To

1. The Secretary to the Government,
Home, Prohibition & Excise (XVI) Department,
Secretariat,
Chennai - 600 009.
2. The Commissioner of Police,
O/o. Commissioner of Police,



H.C.P.No.747 of 2024

WEB COPY

3. The Superintendent of Prison,
Central Prison Puzhal,
Chennai District.
4. The Inspector of Police,
PEW Anna Nagar Police Station,
Chennai District.
5. The Public Prosecutor,
High Court of Madras.



WEB COPY



H.C.P.No.747 of 2024

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

grs

H.C.P.No.747 of 2024

12.07.2024