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HCP.No.801 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.04.2024

CORAM :

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

H.C.P.No.801 of 2024

Namitha

... Petitioner

Vs.

1.State Represented by its
Home Secretary to the Govt. of Tamil Nadu,
Home Prohibition and Excise Department,
Fort St.George,
Chennai – 600 009.

2.The Commissioner of Police,
Greater Chennai,
Chennai – 600 003.

3.The Inspector of Police,
G-3, Kilpauk Police Station,
Kilpauk, Chennai.

4.The Superintendent of Prison,
Central Prison,
Puzhal, Chennai.

... Respondents

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



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order of Detention passed by the 2nd Respondent dated 26.12.2023 in No.694/BCDFGISSSV/2023 against the Petitioner's son the Detenu, Santhosh Kumar, Male, aged about 28 years, son of Balakrishnan, who is confined at Central Prison, Puzhal, Chennai and set aside the same and direct the respondents to produce the detenu before this Hon'ble Court and set him at liberty.

For Petitioner : Mr.T.Perinbanathan
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 namely Santhoshkumar, aged about 28 years, S/o. Balakrishnan, has come forward with this petition challenging the detention order passed by the second respondent dated 26.12.2023 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,



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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 FIR and the complaint has not been properly translated in Tamil. 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.3 & 7, this Court finds that the copy of the FIR is placed in English and Tamil. However, some facts in the Tamil translated copy differ from the English version. It is averred in the FIR (English copy), that the culprit was successful in withdrawing a sum of Rs.7,500 using the Karnataka Bank Debit Card and further, a sum of Rs.700 using the Axis Bank Card, however, in Tamil copy, it is averred that the accused had withdrawn



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money to the tune of Rs.7,500/- and Rs.700/- using the Karnataka Bank Debit Card and Axis Bank Card from the State Bank ATM located at Egmore and Royapettah Smith Road respectively. Further, in the complaint (English) available at Page No.9 of the Booklet, also avers that the culprit was successful in withdrawing Rs.7,500 using the Karnataka Bank Debit Card and a further sum of Rs.700 using the Axis Bank Card, however, in the Tamil copy (available at page no.13), it is averred that culprit was successful in withdrawing money to the tune of Rs.7,500/- and Rs.700/- using the Karnataka Bank Debit Card and Axis Bank Card from the State Bank ATM located at Egmore and Royapettah Smith Road respectively. 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



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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 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



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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.”

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 26.12.2023 in No.694/BCDFGISSSV/2023, is hereby set aside and the Habeas Corpus Petition is allowed. The detenu



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viz., Santhoshkumar, aged about 28 years, S/o. Balakrishnan, 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]

25.04.2024

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

Tsg
To

1.State Represented by its
Home Secretary to the Govt. of Tamil Nadu,
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Chennai – 600 009.

2.The Commissioner of Police,
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Chennai – 600 003.

3.The Inspector of Police,
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4.The Superintendent of Prison,
Central Prison,



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5.The Public Prosecutor,
High Court, Madras.

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