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H.C.P.No.870 of 2024

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.870 of 2024

Akash

.. Petitioner/detenu

Versus

1. State of Tamil Nadu, represented by
The Additional Chief Secretary to Government,
Department of Home, Prohibition and Excise,
Secretariat, Fort St. George,
Chennai - 600 009.
2. Commissioner of Police,
Greater Chennai, Chennai.
3. The Superintendent of Prison,
Central Prison, Puzhal, Chennai.
4. Inspector of Police,
C1 Flower Bazaar Police,
Flower Bazaar, Chennai.

.. 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 pertaining to the order of detention passed by the second respondent in 164/BCDFGISSSV/2024 (Drug Offender) dated 06.03.2024 detaining the petitioner as a Drug Offender as defined under Section 3(1) of Act 14/1982 and set aside the impugned order of detention passed under the Tamil Nadu



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Act 14 of 1982 and direct the respondents to produce the body of the detainee namely Akash, M / A-29, S/o.Balaji, Kuttanikal, Kuttoor post, Thiruvalla, Pathanamthitta district, Kerala - 689 106 presently confined in Central Prison, Chennai before this Court and set him at liberty.

For Petitioner : Mr.C.S.S.Pillai

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

ORDER

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

The petitioner herein, who is the detainee namely Akash, S/o.Balaji, aged 29 years, detained at Central Prison, Puzhal, Chennai has come forward with this petition challenging the detention order passed by the second respondent dated 06.03.2024 slapped on him, 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].

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.11, Home, Prohibition and Excise (XVI) Department dated 10.01.2024 has not been translated in vernacular language. This deprived the detainee 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 Pg.Nos.177 and 179 of the booklet, it is clear that the Government Order in G.O.(D).No.11, Home, Prohibition and Excise (XVI) Department dated 10.01.2024 has not been translated in vernacular language. Therefore, the detainee 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 safeguards embodied in Article 22[5] of the Constitution, observed that the



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detenue 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 detenue, 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 an effective representation. What applies to a document would equally apply to furnishing a translated copy of



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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 06.03.2024 in No.164/BCDFGISSSV/2024, is hereby set aside and the Habeas Corpus Petition is allowed. The detenue viz., Akash, S/o.Balaji, aged 29 years, now detained at Central Prison, Puzhal, Chennai is directed to be set at liberty forthwith, unless he is required in connection with any other case.



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[M.S.R., J]
04.07.2024

[S.M., J]

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

To

1. The Additional Chief Secretary to Government,
Department of Home, Prohibition and Excise,
Secretariat, Fort St. George,
Chennai - 600 009.
2. The Commissioner of Police,
Greater Chennai, Chennai.
3. The Superintendent of Prison,
Central Prison, Puzhal, Chennai.
4. The Inspector of Police,
C1 Flower Bazaar Police,
Flower Bazaar, Chennai.
5. The Public Prosecutor,
High Court of Madras.



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SUNDER MOHAN, J.**

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