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HCP.No.1047 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.10.2024

CORAM :

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM
AND
THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

H.C.P.No.1047 of 2024

C. Binny

... Petitioner/Father of the Detenu

Vs.

1. State of Tamil Nadu,
Rep. by the Secretary to the Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 600 009.
2. The Commissioner of Police,
Office of the Commissioner of Police,
Coimbatore City – 641 604.
3. The Superintendent,
Central Prison,
Coimbatore District.
4. The Inspector of Police,
Cyber Crime Police Station,
Coimbatore City,
Coimbatore District.

... Respondents



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PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus, to call for the entire records pertaining to the detention order passed by the second respondent in C.No. 04/G/IS/2024 dated 05.02.2024 and set aside the same and direct the respondents to produce the petitioner's son namely B.Sabari Son of C.Binny, aged about 22 years, who is now confined in Central Prison, Coimbatore, before this Court and set at liberty.

For Petitioner : Mr.M.Dinesh Sharma

For Respondents : Mr. E. Raj Thilak
Additional Public Prosecutor

ORDER

(Order of the Court was made by *S.M.SUBRAMANIAM, J.*)

The preventive detention order passed by the second respondent dated 05.02.2024 is sought to be quashed in the present habeas corpus petition.

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. The learned Counsel for the petitioner would submit that the Arrest Intimation was not provided to the detenu.

4. That apart, the document enclosed at page no. 235 in volume - II of the booklet served on the detenu is illegible, which caused prejudice to the detenu to submit his representation in an effective manner.

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



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

6. However, the learned Additional Public Prosecutor mainly



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raised an objection on the ground that the detenu has involved in many such criminal cases and those cases are also pending.

7. However, the fact remains that the detenu was arrested on 12.01.2024 and under preventive detention for merely about 10 months.

8. Under these circumstances, we are not inclined to confirm the order of detention, since it is on the verge of lapse. The case registered against the detenu can be dealt with under the law of the land.

9. For the aforesaid reasons, the detention order passed by the second respondent in proceedings C.No.04/G/IS/2024 dated 05.02.204 is hereby set aside and the Habeas Corpus Petition is **allowed**. The detenu viz., B.Sabari, aged 22 years, S/o. Binny confined at Central Prison, Coimbatore is directed to be set at liberty forthwith, unless his confinement is required in connection with any other case

[S.M.S., J.] [V.S.G., J.]
17.10.2024

Index : Yes/No
Speaking Order : Yes/No
Neutral Citation : Yes/No
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1. The Secretary to the Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 600 009.
2. The Joint Secretary to Government,
Public (Law and Order) Department,
Fort St.George, Chennai - 9.
3. The Commissioner of Police,
Office of the Commissioner of Police,
Coimbatore City – 641 604.
4. The Superintendent,
Central Prison,
Coimbatore District.
5. The Inspector of Police,
Cyber Crime Police Station,
Coimbatore City,
Coimbatore District.
6. The Public Prosecutor,
Madras High Court,
Chennai - 104.



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AND
V.SIVAGNANAM, J.

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