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HCP.No.1224 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.08.2024

CORAM :

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

H.C.P.No.1224 of 2024

Esakkiyammal

... Petitioner

Vs.

- 1 The Secretary To The Government
Home Prohibition And Excise Department,
Secretariat, Chennai - 600 009.
- 2 District Collector And District
Magistrate Of Tiruppur,
Coimbatore,
Coimbatore District.
- 3 The Superintendent Of Police
Coimbatore,
Coimbatore District.
- 4 The Superintendent
Central Prison,
Coimbatore.
- 5 State Rep. By
The Inspector Of Police,
Kinathukadavu Police Station,
Coimbatore, 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 records in connection with the order of Detention passed by the 2nd Respondent dated 11.05.2024 in Cr.M.P.No.24/G/2024 against the petitioner's brother Bathalam, M/19 Years, Son of Kailasam, who is confined at Central Prison, Coimbatore and set aside the same and consequently direct the Respondents to produce the detenu before the Honble Court and set him at Liberty

For Petitioner : Mr.A.Saranraj

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

ORDER

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

The petitioner herein is the son of the detenu viz., Bathalam, M/19 Years, Son of Kailasam, who is confined at Central Prison, Coimbatore, has come forward with this petition challenging the detention order passed by the second respondent in Cr.M.P.No.24/G/2024 dated 11.05.2024.

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 grounds raised by the learned counsel for the petitioner to quash the impugned detention order passed by the 2nd respondent are,

(i) There is an inordinate delay in passing the order of detention.

The detenu was arrested on 25.03.2024 and thereafter, the detention order came to be passed only on 11.05.2024.

(ii) The 161 statement has not been translated and furnished to the detenu.

4. Admittedly, the known language to the detenu in the present case is 'Tamil'. The Government order conferring the power of the detaining authority to issue detention order was issued without translating the same in Tamil language. In other words, the Government Order furnished to the detenu is in unknown language to the detenu, which would vitiate the entire proceedings.

5. The non supply of translated version of the Government Order in Tamil caused prejudice to the detenu for submitting effective representation, which is a valuable right provided to the detenu under the Act.



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6. In the case of '**Sushanta Kumar Banik Vs. State of Tripura**', reported in '**2022 LiveLaw (SC) 813**', when there was an inordinate delay from the date of proposal till passing of the detention order and likewise, between the date of detention order and the actual arrest, the Hon'ble Supreme Court had held that the live and proximate link, between the grounds and the purpose of detention, stands snapped in arresting the detenu. The relevant observation of the Hon'ble Supreme Court is extracted hereunder:-

“20. It is manifestly clear from a conspectus of the above decisions of this Court, that the underlying principle is that if there is unreasonable delay between the date of the order of detention & actual arrest of the detenu and in the same manner from the date of the proposal and passing of the order of detention, such delay unless satisfactorily explained throws a considerable doubt on the genuineness of the requisite subjective satisfaction of the detaining authority in passing the detention order and consequently render the detention order bad and invalid because the “live and proximate link” between the grounds of detention and the purpose of detention is snapped in arresting the detenu. A question whether the delay is unreasonable and stands unexplained depends on the facts and circumstances of each



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case.”

7. Drawing inspiration from the judgment in ***Sushanta Kumar Banik's case***, a co-ordinate Bench of this Court in the case of '***Gomathi Vs. Principal Secretary to Government and Others***', reported in '***2023 SCC OnLine Mad 6332***', had held that when there is an inordinate delay from the date of arrest/date of proposal till the order of detention, the live and proximate link between them would also stand snapped and thereby, had quashed the detention order on this ground.

8. Further, for the second ground raised by the learned counsel for the petitioner, 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 detainee 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 detainee, is imperative. In the said context, the Hon'ble Supreme Court has held in Paragraphs 9 and 16 {as in SCC journal} as follows:



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“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 the document in the language known to and understood by the detenu, should the document be in a different language.



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..... **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.”*

9. Accordingly, the detention order passed by the second respondent in Cr.M.P.No.24/G/2024 dated 11.05.2024, is hereby set aside and the Habeas Corpus Petition is allowed. The detenu viz., Bathalam, M/19 Years, Son of Kailasam, who is 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.]

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Index: Yes/No

Internet: Yes/No

Neutral Citation: Yes/No

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AND
V.SIVAGNANAM, J.

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- 6 The Public Prosecutor,
Madras High Court.



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