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HCP.No.1254 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.08.2024

CORAM :

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

AND

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

H.C.P.No.1254 of 2024

Rajeshwari

... Petitioner/wife of the detenu

Vs.

- 1.The State of Tamil Nadu,
Rep. by the Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George, Chennai-600 009.
- 2.The District Magistrate and District Collector of
Namakkal District,
Office of the District Magistrate and District Collector,
Namakkal, Namakkal District.
- 3.The Superintendent of Police,
Namakkal, Namakkal District.
- 4.The Superintendent,
Central Prison, Salem
Salem District.
- 5.The Inspector of Police,
Prohibition Enforcement Wing, Tiruchengode,
Namakkal 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 relating to the detention order in C.M.P.No.18/Bootlegger /2024 (M1), dated 15.05.2024 passed by the 2nd respondent under the Tamilnadu Act 14 of 1982 and set aside the same and direct the respondents to produce the petitioner's husband Rajasekar S/o. Kuppusamy aged about 42 years the detainee, now confined in Central Prison, Salem before this Court and set him at Liberty.

For Petitioner : Mr.S.Prem Kumar

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

ORDER

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

The order of detention passed by the 2nd respondent in proceedings C.M.P.No.18/Bootlegger /2024 (M1), dated 15.05.2024 is sought to be quashed in the present Habeas Corpus Petition.

2.The arrest intimation letter and the statement recorded under Section 161 Cr.P.C relied by the Detaining Authority, furnished to the detainee are illegible. In view of the fact that illegible documents were



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served, the detenue has been deprived of submitting effective representation, which is a mandate under the statute.

3. 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 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



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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.”*

4. 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.



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5. Hence, for the aforesaid reason, the detention order passed by the second respondent in proceedings C.M.P.No.18/Bootlegger /2024 (M1), dated 15.05.2024 is quashed and the Habeas Corpus Petition is **allowed**. The detainee viz., Rajasekar S/o. Kuppusamy aged about 42 years the detainee, now confined in Central Prison, Salem is directed to be set at liberty forthwith, unless he is required in connection with any other case.

[S.M.S., J.]

[V.S.G., J.]

16.08.2024

Index: Yes/No

Internet: Yes/No

Neutral Citation: Yes/No

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To

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4.The Superintendent,
Central Prison, Salem
Salem District.

5.The Inspector of Police,
Prohibition Enforcement Wing, Tiruchengode,
Namakkal District.

6.The Public Prosecutor,
Madras High Court.

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