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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.07.2024

CORAM :

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

H.C.P.No.1367 of 2024

Sumathi ... Petitioner

Vs.

1.State of Tamil Nadu,
Rep. by The Secretary of State,
Prohibition and Excise Department,
St.George Fort, Chennai – 600 009.

2.The Commissioner of Police,
Greater Chennai, Chennai City.

3.The Superintendent of Prison,
Central Prison, Puzhal,
Chennai – 600 066.

4.The Inspector of Police,
J-6, Thiruvanmiyur Police Station,
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 relating to the order of detention passed by the 2nd respondent in BCDFGISSSV No.143/2024

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dated 28.02.2024 under the Tamil Nadu Act 14 of 1982 against the petitioner's brother, the detenu namely Vinoth, Male, aged about 39 years, S/o.Elumalai, by designating him as Goonda, now confined in Central Prison, Puzhal, Chennai and set aside the same and direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner : Mr.C.V.Kumar
For Respondents : Mr.A.Gokulakrishnan,
Additional Public Prosecutor

ORDER

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

The petitioner herein, who is the sister of the detenu namely Vinoth, aged about 39 years, S/o.Elumalai, has come forward with this petition challenging the detention order passed by the second respondent dated 28.02.2024 slapped on her brother, 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, 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 detenu from making effective representation. Therefore, on this sole ground, the detention order is liable to be quashed.

4. On perusal of the documents available on record, 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 detenu 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 the case of ***'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,

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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 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."*

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. Accordingly, the detention order passed by the second respondent on 28.02.2024 in BCDFGISSSV No.143/2024, is hereby set aside and the Habeas Corpus Petition is allowed. The detenue namely Vinoth, aged about 39 years, S/o.Elumalai, is directed to be set at liberty forthwith, unless his confinement is required in connection with any other case.

[M.S.R., J] [S.M., J]
03.07.2024

Index: Yes/No
Neutral Citation: Yes/No

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

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To

1.The Secretary of State Tamil Nadu,,
Prohibition and Excise Department,
St.George Fort,
Chennai – 600 009.

2.The Commissioner of Police,
Greater Chennai, Chennai City.

3.The Superintendent of Prison,
Central Prison, Puzhal,
Chennai – 600 066.

4.The Inspector of Police,
J-6, Thiruvanmiyur Police Station,
Chennai.

5.The Public Prosecutor,
High Court, Madras.

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