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HCP.No.1626 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.08.2024

CORAM :

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

H.C.P.No.1626 of 2024

G.Shakila

... Petitioner/mother of the petitioner

Vs.

1.State of Tamil Nadu rep. By
The Secretary to Government,
Prohibition and Excise Department,
Fort St.George, Chennai-600 009.

2.The Commissioner of Police,
Avadi City,
Avadi, Chennai – 600 054.

3.The Inspector of Police,
T-7 Tank Factory Police Station,
Chennai – 600 054.

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

... Respondents

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 in Memo No.78/BCDFGISSSV/2024 dated 20.06.2024 on the file of



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the 2nd respondent herein and set aside the same and direct the respondents herein to produce the petitioner's son Karthik, Son of Gopi aged 20 years, now confined in the Central Prison, Chennai before this Court and set him at liberty.

For Petitioner : Mr.Charles Kamalesh

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., Karthik, Son of Gopi aged 20 years, now confined in the Central Prison, Chennai , has come forward with this petition challenging the detention order passed by the second respondent in Memo No.78/BCDFGISSSV/2024 dated 20.06.2024.

2. Heard the learned counsel for the petitioner, as well as the learned Additional Public Prosecutor appearing for the respondents.

3.The special report submitted by the Sponsoring Authority, which



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is enclosed at Page No.163 of the typeset of paper is undated. Thus, the detainee has been deprived of submitting representation in an effective manner.

4. 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 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:

“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



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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.”



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5. 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.

6. Accordingly, the detention order passed by the second respondent in Memo No.78/BCDFGISSSV/2024 dated 20.06.2024, is hereby set aside and the Habeas Corpus Petition is allowed. The detenu viz.,Karthik, Son of Gopi aged 20 years, now confined in the Central Prison, Chennai , 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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S.M.SUBRAMANIAM, J.
AND
V.SIVAGNANAM, J.

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To

- 1.State of Tamil Nadu rep. By
The Secretary to Government,
Prohibition and Excise Department,
Fort St.George, Chennai-600 009.
- 2.The Joint Secretary to the Government,
Public Law and Order Department,
Fort St.George, Chennai.
- 3.The Commissioner of Police,
Avadi City,
Avadi, Chennai – 600 054.
- 4.The Inspector of Police,
T-7 Tank Factory Police Station,
Chennai – 600 054.
- 5.The Superintendent of Prison,
Central Prison Puzhal,
Chennai – 600 066.
- 6.The Public Prosecutor,
Madras High Court.

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