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HCP.No.1744 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.08.2024

CORAM :

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

AND

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

H.C.P.No.1744 of 2024

Priya

... Petitioner/Wife of
the detenuue

Vs.

1. Government of Tamil Nadu,
Represented by its Secretary,
Home, Prohibition & Excise Department,
Secretariat,
Chennai - 600 009.
2. The District Collector and District Magistrate,
Office of the District Collector and District Magistrate,
Kallakurichi District, Kallakurichi.
3. The Superintendent of Police,
Kallakurichi, Kallakurichi.
4. The Superintendent of Prisons,
The Central Prison,
Cuddalore,
Cuddalore District.



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5. Inspector of Police,
Chinnasalem Police Station,
Kallakurichi District,
Crime No.299 of 2024.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus, calling for the records in D.O.No.C2/17/2024 dated 28.06.2024 on the file of the 2nd respondent and quash the same and direct the respondents herein to produce the petitioner's husband Palanisamy, male aged about 35 years, S/o. Murugesan, who is now confined in Central Prison, Cuddalore before this Court and set him at liberty.

For Petitioner : Mr.S.Silambuselvan

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 is under challenge 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.

3. The learned counsel for the petitioner submitted that the



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Government Order in G.O.(D).No.98, Home, Prohibition and Excise (XVI)

Department dated 15.04.2024 has not been translated in the language known to the detenu and thus the detenu is deprived from making effective representation.

4. On perusal of the documents available on record, particularly in Page No.1 & 2 of Volume II of the booklet, a copy of the Government Order in G.O.(D).No.98, Home, Prohibition and Excise (XVI) Department dated 15.04.2024 is available and the translated copy in vernacular version of the same has not been furnished to the detenu. 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 '*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



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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.

..... **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. Hence, for the aforesaid reasons, the detention order passed by the second respondent on 28.06.2024 in proceedings No.D.O.No.C2/17/2024 is hereby set aside and the Habeas Corpus Petition is **allowed**. The detenu viz., Palanisamy, S/o. Murugesan, aged about 35 years, confined at Central Prison, Cuddalore is directed to be set at liberty forthwith, unless he is



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required in connection with any other case.

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J.]

[S.M.S., J.]

[V.S.G.,

21.08.2024

Index : Yes/No
Speaking Order : Yes/No
Neutral Citation : Yes/No
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To

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The Central Prison,
Cuddalore,
Cuddalore District.
5. Inspector of Police,
Chinnasalem Police Station,
Kallakurichi District,
Crime No.299 of 2024.
6. The Joint Secretary to Government,
Public (Law and Order) Department,
Fort St.George, Chennai - 9.
7. The Public Prosecutor,
Madras High Court,
Chennai - 104.



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