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H.C.P.No.1866 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.08.2024

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

AND

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

H.C.P.No.1866 of 2024

Govindhammal

... Petitioner

Vs.

1.The Secretary to the Government,
Home Prohibition and Excise Department,
Secretariat,
Chennai – 600 009.

2.District Collector and District Magistrate,
Cuddalore District,
Cuddalore.

3.The Superintendent of Police,
Cuddalore District,
Cuddalore.

4.The Superintendent of Prison,
Central Prison, Cuddalore – 4.

5.The Inspector of Police,
Neyveli Thermal Police Station,
Cuddalore District.

... Respondents

Prayer: Habeas Corpus Petition is filed under Article 226 of the Constitution



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of India for issuance of a Writ of Habeas Corpus, to call for the records in connection with the order of detention passed by the 2nd respondent dated 05.04.2024 in C3/D.O.No.29/2024 against the petitioner son Ezharai @ Arasu @ Rajkumar, Male aged 31 years S/o. Sakthivel, who is confined at Central Prison, Cuddalore and set aside the same and direct the respondents to produce the detenu before the Court and set him at Liberty.

For Petitioner : Mr.D.Balaji

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 C3/D.O.No.29/2024 dated 05.04.2024 is sought to be quashed in the present Habeas Corpus Petition.

2. The learned counsel for the petitioner would submit that the translation copy of the Government Order has not been furnished to the detenu. The detenu has no knowledge in reading English and non translation of the Government Order caused prejudice to the detenu from submitting



effective representation, which is a valuable right under the Act.

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3. In this context, it is useful to refer to the judgment of the Hon'ble Supreme Court of India in the case of ***Powanammal vs. State of Tamil Nadu***¹. 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 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

1 [(1999) 2 SCC 413]



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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 2nd respondent in C3/D.O.No.29/2024 dated 05.04.2024 is quashed and the Habeas Corpus Petition is allowed. The detainee viz., Mr.Ezharai @ Arasu @ Rajkumar S/o.Sakthivel aged about 31 years, who is confined at Central Prison, Cuddalore, 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.]
27.08.2024

Jeni
Index : Yes
Speaking order
Neutral Citation : Yes



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To

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- 6.The Public Prosecutor,
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