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H.C.P.No.2047 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.09.2024

CORAM :

THE HON'BLE MR. JUSTICE S.M.SUBRAMANIAM  
AND  
THE HON'BLE MR.JUSTICE V.SIVAGNANAM

H.C.P.No.2047 of 2024

Malar

W/o Late Sekar

.. Petitioner

v.

1. The Secretary to the Government  
Home, Prohibition and Excise Department  
Fort St.George, Chennai 600 009

2. The Commissioner of Police  
Tambaram Commissionerate  
Chennai 600 119

3. The Superintendent of Prison  
Central Prison-II, Puzhal  
Chennai

4. The Inspector of Police (L & O)  
T-15 Kannagi Nagar Police Station  
Chennai

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India,  
praying for issuance of a Writ of Habeas Corpus, directing the respondents



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to produce the petitioner's son Umapathy, S/o Late Sekar, Male, aged about 36 years and now confined at Central Prison-II, Puzhal, Chennai before this Hon'ble Court and set him at liberty forthwith by setting aside the order of detention bearing BCDFGISSSV No.75/2024 dated 06.06.2024 on the file of the second respondent.

For Petitioner        ::        Mr.A.Thirumaran

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 2<sup>nd</sup> respondent in proceedings BCDFGISSSV No.75/2024 dated 06.06.2024 is sought to be quashed in the present habeas corpus petition.

2. The learned counsel for the petitioner would submit that the translation copies of the arrest intimation order and the accident register have not been furnished to the detenu. The detenu has no knowledge in reading English, as he studied upto 8<sup>th</sup> Standard and hence the non translation of the above documents caused prejudice to the detenu from submitting effective representation, which is a valuable right under the Act.



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 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.*

..... **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 BCDFGISSSV No.75/2024 dated 06.06.2024 is quashed and the habeas corpus petition is allowed. The detenu viz., S.Umapathy, aged 36 years, S/o Sekar, who is confined at Central Prison-II, Puzhal, Chennai is directed to be set at liberty forthwith, unless he is required in connection with any other case.

Index : yes

(S.M.S.,J.)

(V.S.G.,J.)

Neutral citation : yes/no

13.09.2024

SS

To

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