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H.C.P.No.1933 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.08.2024

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

AND

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

H.C.P.No.1933 of 2024

Ammu

... Petitioner

Vs.

1.The Government of Tamil Nadu,
Rep. by its Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai – 600 009.

2.The Commissioner of Police,
Greater Chennai,
Vepery,
Chennai – 07.

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

4.Inspector of Police,
E-4, Abiramapuram Police Station,
Chennai.

... Respondents



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Prayer: Habeas Corpus Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Habeas Corpus, calling for records relating to the proceedings of the 2nd respondent in BCDFGISSSV.No.719/2024 dated 26.06.2024 against the petitioner's son Vaseekaran, male, aged about 21 years, S/o. Panneerselvam and quash the same and consequently direct the respondents herein to produce the detenue who is detained under the Tamil Nadu Act 14 of 1982 currently confined in the Central Prison, Puzhal before this Court and set him at liberty.

For Petitioner : Mr.P.Surendran

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 BCDFGISSSV.No.719/2024 dated 26.06.2024 is sought to be quashed 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.



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3. The 161 Statement obtained from the petitioner is undated. Thus, it raises a doubt. The statement has been relied upon by the Detaining Authority to form an opinion that there is likelihood of detenu coming out on bail. When the statement itself is unreliable, the formation of opinion should go.

4. 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

¹ (1999) 2 SCC 413



WEB COPY



H.C.P.No.1933 of 2024

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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H.C.P.No.1933 of 2024

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.”

5. The Detaining Authority must be subjectively satisfied for invoking the Act 14 of 1982. Undated Statement obtained from the relatives cannot be relied upon for the purpose of forming an opinion that there is likelihood of causing breach of public order. The lauder objectives of the preventive detention law are to be looked into while issuing such an order of preventive detentions, which infringes the personal liberty of a citizen.

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.



H.C.P.No.1933 of 2024

7. Hence, for the aforesaid reason, the Detention Order passed by the 2nd respondent in BCDFGISSSV.No.719/2024 dated 26.06.2024 is quashed and the Habeas Corpus Petition is allowed. The detainee viz., Vaseekaran S/o.Panneerselvam, aged about 21 years, who is confined at Central Prison, Puzhal, Chennai, 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

To

- 1.The Additional Chief Secretary to Government,
The Government of Tamil Nadu,
Home, Prohibition and Excise Department,
Secretariat,
Chennai – 600 009.
- 2.The Commissioner of Police,
Greater Chennai,
Vepery, Chennai – 07.
- 3.The Superintendent,
Central Prison, Puzhal,
Chennai – 600 066.



H.C.P.No.1933 of 2024

4. Inspector of Police,
E-4, Abiramapuram Police Station,
Chennai.

5. The Public Prosecutor,
Madras High Court.



WEB COPY



H.C.P.No.1933 of 2024

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and
V.SIVAGNANAM, J.

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