



HCP.No.2005 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.09.2024

CORAM :

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

AND

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

H.C.P.No.2005 of 2024

Rabiya Bee

... Petitioner/Mother
of the Detenue

Vs.

1. State of Tamil Nadu,
Represented by the Secretary,
Home, Prohibition and Excise Department,
Fort St.George,
Chennai - 600 009.
2. The Commissioner of Police,
Greater Chennai,
Office of the Commissioner of Police
(Goondas Section),
Chennai - 600 054.
3. The Superintendent of Prison,
Central Prison,
Puzhal,
Chennai District.
4. The Inspector of Police,
J-1, Saidapet Police Station,
Chennai.

... Respondents



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PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus, to call for the records relating to the Detention Order vide Memo BCDFGISSSV No.431/2024 dated 30.04.2024, passed by the second respondent and quash the same and direct the respondents herein to produce the petitioner's son namely Mohammed Hussain S/o. Ahamed Hussain, aged 21 years, (who is presently undergoing detention in the Central Prison, Puzhal, Chennai) before this Court and set him at liberty.

For Petitioner : Mr.R.Parthiban
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 dated 30.04.2024 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 Government Order in G.O.(D).No.82, Home, Prohibition



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and Excise (XVI) Department dated 15.04.2024 enclosed at page nos.81 and 32 in Volume - II of the booklet served on the detenu has not been translated in the language known to the detenu. Thus, the detenu is deprived from making effective representation and that the Detention Order passed by the Detaining Authority is vitiated.

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 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.”*



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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. Hence, for the aforesaid reasons, the detention order passed by the second respondent dated 30.04.2024 in proceedings BCDFGISSSV No.431/2024 is hereby set aside and the Habeas Corpus Petition is **allowed**. The detenu viz., Mohammed Hussain, S/o. Ahamed Hussain aged 21 years 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.]
05.09.2024

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

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1. State of Tamil Nadu,
Represented by the Secretary,
Home, Prohibition and Excise Department,
Fort St.George,
Chennai - 600 009.
2. The Joint Secretary to Government,
Public (Law and Order) Department,
Fort St.George, Chennai - 9.
3. The Commissioner of Police,
Greater Chennai,
Office of the Commissioner of Police
(Goondas Section),
Chennai - 600 054.
4. The Superintendent of Prison,
Central Prison,
Puzhal,
Chennai District.
5. The Inspector of Police,
J-1, Saidapet Police Station,
Chennai.
6. The Public Prosecutor,
Madras High Court,
Chennai - 104.



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