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HCP.No.1981 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.08.2024

CORAM :

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM
AND
THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

H.C.P.No.1981 of 2024

Kanchana

... Petitioner

Vs.

State of Tamil Nadu by

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

2.The Commissioner of Police,
Greater Chennai,
Chennai.

3.The Superintendent of Prison,
Central Prison Puzhal,
Chennai District.

4.The Inspector of Police,
H-5 New Washermenpet Police Station,
Chennai District.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus, to call for the records pertaining to the order of detention passed by the 2nd respondent in



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634/BCDFGISSSV/2023 dated 29.11.2023 against detenue Sasikumar at Appu S/o.Loganathan, Male 25yrs now confined in Central Prison Puzhal, Chennai and setaside the same and direct the respondents to produce the detenue before this Court and set him at liberty.

For Petitioner : Mr.V.Karthick

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 proceedings 634/BCDFGISSSV/2023 dated 29.11.2023 is sought to be quashed in the present Habeas Corpus Petition.

2.The report submitted by the Sponsoring Authority, which is enclosed in the typeset of paper is undated. Thus, the detenue has been deprived of submitting representation in an effective manner.



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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**'. 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

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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 634/BCDFGISSSV/2023 dated 29.11.2023 is quashed and the Habeas Corpus Petition is **allowed**. The detenue viz., Sasikumar at Appu S/o.Loganathan, Male 25yrs now confined in 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.]

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Index: Yes/No

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Neutral Citation: Yes/No

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S.M.SUBRAMANIAM, J.
AND
V.SIVAGNANAM, J.

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To

- 1.The Secretary to Government,
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Chennai – 600 009.
- 2.The Commissioner of Police,
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Chennai.
- 3.The Superintendent of Prison,
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- 4.The Inspector of Police,
H-5 New Washermenpet Police Station,
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- 5.The Public Prosecutor,
Madras High Court.

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