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HCP.No.2186 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.09.2024

CORAM :

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM
AND
THE HONOURABLE MR. JUSTICE N.SENTHILKUMAR

H.C.P.No.2186 of 2024

Rathi

... Petitioner/mother of the detenu

Vs.

1.State of Tamil Nadu
Rep. By its Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai – 600 009.

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

3.The Inspector of Police,
H-8 Thiruvottriyur Police Station,
Chennai.

4.The Superintendent,
Central Prison, Puzhal, 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 entire records, relating to petitioner's son detention under Tamil Nadu Act 14 of 1982 vide detention order, dated 06.06.2024 on the file of the second respondent herein made in proceedings No.638/BCDFGISSSV/2024 and quash the same as illegal and consequently direct the respondents herein to produce the said petitioner's son namely Abi @ Abinesh, aged 21 years, son of Kumaresan before this Court and set him at Liberty now petitioner's son detained at Central Prison, Puzhal Chennai - 600 066.

For Petitioner : Mr.C.C.Chellappan

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 No.638/BCDFGISSSV/2024 dated 06.06.2024 is sought to be quashed in the present Habeas Corpus Petition.

2.The 161 Statement relied by the detaining authority, which is enclosed in the typeset of paper is unsigned. Thus, the detenue has been deprived of submitting representation in an effective manner.



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 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



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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.

5. Hence, for the aforesaid reason, the detention order passed by the second respondent in proceedings No.638/BCDFGISSSV/2024 dated 06.06.2024 is quashed and the Habeas Corpus Petition is **allowed**. The detenue viz., Abi @ Abinesh, aged 21 years, son of Kumaresan 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.



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[S.M.S., J.]

[N.S., J.]

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S.M.SUBRAMANIAM, J.
AND
N.SENTHILKUMAR, J.

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To

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- 3.The Inspector of Police,
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Chennai.
- 4.The Superintendent,
Central Prison, Puzhal, Chennai.
- 5.The Joint Secretary to Government
Public (Law and Order),
Fort ST.George, Chennai – 9.
- 6.The Public Prosecutor,
Madras High Court.

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