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HCP.No.2299 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.09.2024

CORAM :

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM
AND
THE HONOURABLE DR. JUSTICE A.D. MARIA CLETE

H.C.P.No.2299 of 2024

Velavan

... Petitioner/Uncle of the Detenu

Vs.

1. The Secretary to the Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 600 009.
2. District Collector and District Magistrate of
Kancheepuram District, Kancheepuram.
3. The Superintendent of Police,
Kancheepuram District, Kancheepuram.
4. The Superintendent of Prison,
Central Prison, Vellore.
5. The Inspector of Police,
Oragadam Police Station,
Kancheepuram District.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, praying for the issuance of Writ of Habeas Corpus, to call for the records in connection with the order of detention passed by the second respondent dated 31.07.2024 in Rc.No.178/2024/M6-D.O.No.40/2024 against the petitioner wife's younger



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brother Subramani @ Elumalai, Male aged 24 years S/o. Selvaraj, who is confined at Central Prison, Vellore and set aside the same and direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner : Mr.P.Raman

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 31.07.2024 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.

3. The Government Order in G.O.(D).No.195, Home Prohibition and Excise (XVI) Department dated 12.07.2024 enclosed at page nos.117 to 119 in volume - II of the booklet served on the detenu has not been translated in the language known to the detenu. Thus, the detenu has been deprived of submitting his representation in an effective manner.



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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.”*

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.



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6. For the aforesaid reasons, the detention order passed by the second respondent in proceedings Rc.No.178/2024/M6-D.O.No.40/2024 dated 31.07.2024 is hereby set aside and the Habeas Corpus Petition is **allowed**. The detenu viz., Subramani @ Elumalai, aged 24 years S/o. Selvaraj confined at Central Prison, Vellore is directed to be set at liberty forthwith, unless he is required in connection with any other case.

[S.M.S., J.] [A.D.M.C., J.]
27.09.2024

Index: Yes/No
Speaking/Non-speaking order
veda



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To

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1. The Secretary to the Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 600 009.
2. The Joint Secretary to Government,
Public (Law and Order) Department,
Fort St.George, Chennai - 9.
3. District Collector and District Magistrate of
Kancheepuram District, Kancheepuram.
4. The Superintendent of Police,
Kancheepuram District, Kancheepuram.
5. The Superintendent of Prison,
Central Prison, Vellore.
6. The Inspector of Police,
Oragadam Police Station,
Kancheepuram District.
7. The Public Prosecutor,
Madras High Court,
Chennai - 104.



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S.M.SUBRAMANIAM, J.
AND
DR.A.D.MARIA CLETE, J.

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