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H.C.P.No.2200 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 08.02.2024

CORAM :

THE HONOURABLE MR. JUSTICE M.S.RAMESH

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

H.C.P.No.2200 of 2023

Bharathi

... Petitioner

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
3. The Superintendent
Central Prison, Puzhal, Chennai.
4. The Inspector of Police
R-11 Ramapuram Police Station,
Chennai.

... Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue Writ of Habeas Corpus, calling for the records relating to the detention order in No.447/BCDFGISSSV/2023 dated 06.10.2023 passed by the 2nd



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respondent under the Tamil Nadu Act 14 of 1982 and set aside the same and direct the 4th respondent to produce the detenu namely, Srikanan @ Karan,S/o. Gopal, the detenu, now confined in Centrall Prison, Puzhal, Chennai, before this Hon'ble Court and set him at liberty.

For petitioner : Mr. G. Mohammed Aseef
For Respondents : Mr.E. Raj Thilak
Additional Public Prosecutor
Assisted by Aravind.C

ORDER

M.S.RAMESH, J.
and
SUNDER MOHAN, J.

The petitioner, mother of the detenu Srikanan @ Karan, Son of Gopal, aged about 27 years, has come forward with this petition challenging the detention order passed by the 2nd respondent dated 06.10.2023, in No.447/BCDFGISSSV, slapped on her son, branding him as "Drug Offender" as contemplated under Section 2(e) of the Tamil Nadu Act 14/1982.

2. Heard the learned counsel for the petitioner and the learned Additional Public Prosecutor appearing for the respondents.

3. Though several grounds are raised in the petition, the learned



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counsel for the petitioner submitted that the expert's opinion, which was furnished to the detenu along with the grounds of detention, was improperly translated in Tamil, which is the language known to the detenu.

4. On a perusal of the expert's opinion, which is found in the booklet, we find that, in the Tamil version furnished to the detenu, the opinion has been improperly translated. In the circumstances, we are of the view that the right of the detenu to make an effective representation as against the impugned order of detention has been curtailed.

5. 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 had occasion to deal with similar situation where in the Grounds of Detention referred to an order remanding the detenu therein to judicial custody was in English language. Since the tamil version of the document was not supplied to the detenu therein, a specific issue was raised by the Hon'ble Supreme Court whether failure to supply Tamil version of the remand order passed in English, a language not



known to the detenu therein, would vitiate the detenu's further detention. 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 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



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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.”

6. Thus, the detention order is vitiated on the ground of improper translation of the expert's opinion and hence, the same is liable to be quashed.

7. In view of the aforesaid reasons, the detention order passed by the 2nd respondent dated 06.10.2023 in No.447/BCDFGISSSV/2023, is hereby



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set aside, and the Habeas Corpus Petition is allowed. The detenu, viz.,
Srikaran @ Karan, S/o.Gopal, aged about 27 years, is directed to be set at
liberty forthwith unless he is required in connection with any other case.

[M.S.R., J] [S.M., J]
08.02.2024

bga
Index : Yes / No
Neutral Citation : Yes / No



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To

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Fort St. George, Chennai 600 009.
2. The Commissioner of Police
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Central Prison, Puzhal, Chennai.
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5. The Public Prosecutor,
High Court, Madras.
6. The Joint Secretary,
Law and Order Department,
Secretariat, Chennai.



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