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H.C.P.No.2378 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.03.2024

CORAM :

THE HONOURABLE MR. JUSTICE M.S.RAMESH

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

H.C.P.No.2378 of 2023

A. Pavithra

...Petitioner/wife of the Detenu

Vs.

1. The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Fort St. George, Chennai 600 009.

2. The Commissioner of Police,
Greater Chennai Commissioner of Police,
Vepery, Chennai 600 007.

3. The Superintendent of Police,
Central Prison, Puzhal, Chennai 600 066

4. The Inspector of Police,
D-5, Marina Police Station,
Chennai

...Respondents

Prayer : Habeas Corpus Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Habeas Corpus, calling for the records relating to the detention order in No.531/BCDFGISSSV/2023, dated



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02.11.2023, passed by the 2nd respondent under the respondent to produce the petitioner's husband V.Arun Kumar @ Norsa, S/o. Veeran, aged about 29 years, the detenu now confined in Central Prison, Puzhal, before this Hon'ble Court and set him at liberty.

For Petitioner : Mr. S. Apunu
For Respondents : Mr.E. Raj Thilak
Additional Public Prosecutor
assisted by Mr.C.Aravind

ORDER

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

The petitioner, wife of the detenu V.Arun Kumar @ Norsa, aged about 29 years, S/o. Veeran, has come forward with this petition challenging the detention order passed by the 2nd respondent dated 02.11.2023 slapped on her husband, branding him as "Goonda" as contemplated under Section 2(f) of the Tamil Nadu Act 14 of 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 counsel for the petitioner contended that the detenu has been provided with the translated version of the bail order and not the original bail order, which was relied on by the Detaining Authority to arrive at the subjective satisfaction that the detenu is likely to be released on bail in the ground case and therefore, the detention order is vitiated.

4. On a perusal of the Grounds of Detention, in particular, paragraph No.4, it is seen that the Detaining Authority had relied upon the order of bail in a similar case in CrI.M.P.No.16039/2023 passed by the learned Principal Sessions Judge, Chennai. However, a perusal of the Booklet reveals that only translated version of the said bail order was furnished and not the original bail order. In effect, the actual bail order has not been furnished to the detenu. Further, the detenu is deprived of his right to ascertain as to whether the translation has been properly made. Serious prejudice would be caused to the detenu as the detenu would be denied of his right to make effective representation by non furnishing of original bail order. The observations of the Hon'ble Supreme Court in ***Powanammal Vs. State of Tamil Nadu*** reported in ***(1999) 2 SCC 413*** would apply to a



case of this nature also. The right of being communicated with the grounds of detention has been denied to the detenu. It would be useful to extract the relevant observations in the above judgment, which are 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.

.....



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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. Thus, the detention order is vitiated on the ground of not furnishing the original bail order, which was relied on by the Detaining Authority to arrive at the subjective satisfaction that the detenu is likely to be released on bail and hence, the same is liable to be quashed.

6. Accordingly, the detention order passed by the 2nd respondent dated 02.11.2023 in No.531/BCDFGISSSV/2023 is hereby set aside and the Habeas Corpus Petition is allowed. The detenu viz., Arunkumar @ Norsa, aged about 29 years, S/o. Veeran, 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]
11.03.2024

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Index : Yes / No

Neutral Citation : Yes / No

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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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