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H.C.P.No.2469 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 21.03.2024

CORAM :

THE HONOURABLE MR. JUSTICE M.S.RAMESH

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

H.C.P.No.2469 of 2023

Meenachi

... Petitioner

Vs.

1. State Represented by

The Secretary to Government,
Home, Prohibition, Excise Department,
Secretariat, Fort St.George, Chennai - 600 009.

2.The Commissioner of Police,
Salem City.

3.The Superintendent of Prison,
Central Prison, Salem.

4.The Inspector of Police,
Azhagapuram Police Station,
Salem City

... Respondents

Petition filed under Article 226 of the Constitution of India, praying
to issue Writ of Habeas Corpus, calling for the records in C.M.P.



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No.101/Goonda/Salem City/2023 dated 16.11.2023 on the file of the Commissioner of Police, Salem City, the second respondent herein and quash the same as illegal and direct the respondent to produce the detenu, Aravinth @ Aravinth Kumar, S/o. Ganesan, aged about 26 years, now confined at Central Prison, Salem, before this Hon'ble Court and set him at liberty.

For petitioner : M/s. S. Sengkodi

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 namely Aravinth @ Aravinth Kumar, aged about 26 years, S/o. Ganesan, has come forward with this petition challenging the detention order passed by the 2nd respondent, dated 16.11.2023 slapped on her son, branding him as "Goonda" under the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 [Tamil Nadu Act 14 of 1982].



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2.Heard the learned counsel for the petitioner and the learned

Additional Public Prosecutor appearing for the respondents.

3.Though several grounds were raised by the learned counsel for the petitioner, it is stated that the detention order is liable to be quashed on the sole ground that the Remand Order dated 30.10.2023 was improperly translated in the vernacular language.

4. On a perusal of the Remand Order dated 30.10.2023 and the translated version, we find that, in English version it is stated that the the accused was explained about the **right to legal aid**, whereas, in the Tamil version it is stated that the accused was explained about the right to **free legal aid**. In view of the improper translation, we are of the view that the right of the detenu to make an effective representation as against the impugned order of detention is 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



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(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 detenue 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



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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.”



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6.Thus, the detention order is vitiated on the ground of improper translation of the Remand Order and hence, the same is liable to be quashed.

7.Accordingly, the detention order passed by the 2nd respondent dated 16.11.2023 in C.M.P. No.101/Goonda/Salem City/2023, is hereby set aside and the Habeas Corpus Petition is allowed. The detenu viz., Aravinth @ Aravinth Kumar, S/o.Ganesan, aged about 26 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.)
21.03.2024

bga

Internet : Yes
Index : Yes / No
Neutral Citation : Yes / No



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5. The Public Prosecutor,
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6. The Joint Secretary,
Law and Order Department,
Secretariat, Chennai.



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