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H.C.P.No.2543 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 23.02.2024

CORAM :

THE HONOURABLE MR. JUSTICE M.S.RAMESH

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

H.C.P.No.2543 of 2023

Vijay Sahani

... Petitioner

Vs.

1. The Secretary to Government,
Home, Prohibition, Excise Department,
Secretariat, Fort St.George, Chennai - 600 009.
- 2.The District Magistrate and District Collector,
Erode District, Erode.
3. The Superintendent of Police,
Erode District, Erode.
4. The Superintendent of Prison,
Central Prison, Coimbatore,
Coimbatore District.
5. State represented by its
The Inspector of Police,
Karungalapalayam Police Station,
Erode District.

... Respondents



H.C.P.No.2543 of 2023

Petition filed under Article 226 of the Constitution of India, praying to issue Writ of Habeas Corpus, calling for the entire records relating to the petitioner's brother detention under Tamil Nadu Act 14 of 1982 vide detention order, dated 19.10.2023 on the file of the second respondent herein made in proceedings Memo Cr.M.P. No.29/Goonda/2023/C1, quash the same as illegal and consequently direct the respondents herein to produce the petitioner's brother namely Mothilal Sahani, S/o. Ram Iqval Sahani, aged 29 years before this Hon'ble Court and set him at liberty from detention.

For petitioner : Mr.W. Camyles Gandhi
For Respondents : Mr.E. Raj Thilak
Additional Public Prosecutor
Assisted by Aravind.C

ORDER

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

The petitioner, who is the brother of the detenu namely Mothilal Sahani, S/o.Ram Iqval Sahani, aged 29 years, has come forward with this petition challenging the detention order passed by the 2nd respondent, dated 19.10.2023 slapped on his brother, 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].



H.C.P.No.2543 of 2023

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 detention order is liable to be quashed on the sole ground that since the documents furnished to the detenu were not translated from English to Hindi, the language which he is well acquainted with, he is not able to address effective representation.

4. It is seen from the booklet that most of the documents are in Tamil. We find an endorsement made to the effect that the contents of the documents were read over and explained to the detenu in Hindi, which confirms the fact that the detenu is conversant only in Hindi language. Since the translated version of the documents have not been furnished, we are of the view that it is not sufficient compliance of the mandatory provisions, and hence would deny the petitioner's right to make an effective representation. Further we also note another aspect from the endorsement that, all the pages were explained to the detenu in Hindi at 11.00 hours,



H.C.P.No.2543 of 2023

which is improbable. For the above reasons, we are of the view that the right of the detenu to make an effective representation as against the impugned order of detention is denied and deprived.

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 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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H.C.P.No.2543 of 2023

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 non translation of the documents in Hindi and the same is liable to be quashed.

7.Accordingly, the detention order passed by the 2nd respondent dated 19.10.2023 in Cr.M.P. No.29/Goonda/2023 C1, is hereby set aside and the Habeas Corpus Petition is allowed. The detenu viz., Mothilal Sahani, S/o.Ram Iqval Sahani, aged about 29 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.)
23.02.2024

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Neutral Citation : Yes / No

6/8



H.C.P.No.2543 of 2023

To

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Home, Prohibition, Excise Department,
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5. State represented by its
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Karungalapalayam Police Station,
Erode District.
6. The Public Prosecutor,
High Court, Madras.
7. The Joint Secretary,
Law and Order Department,
Secretariat, Chennai.



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