



HCP.No.2546 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.03.2024

CORAM :

THE HONOURABLE MR. JUSTICE M.S. RAMESH
AND
THE HONOURABLE MR. JUSTICE SUNDER MOHAN

H.C.P.No.2546 of 2023

Mehtha

... Petitioner/wife of the detenue

Vs.

1.State of Tamil Nadu
Rep. by its Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai-600 009.

2.The Commissioner of Police,
Greater Chennai.

3.The Inspector of Police,
F-5 Choolaimedu Police Station,
Chennai.

4.The Superintendent,
Central Prison, Puzhal,
Chennai.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to
issue a Writ of Habeas Corpus, to call for the entire records, relating to the



HCP.No.2546 of 2023

petitioner's husband detention under Tamil Nadu Act 14 of 1982 vide detention order, dated 29.11.2023 on the file of the second respondent herein made in proceedings No.632/BCDFGISSSV/2023 and quash the same as illegal and consequently, direct the respondents herein to produce the petitioner's husband namely Siva @ Sivakumar, aged 43 years, son of Mohanasundaram, before this Court and set him at liberty, now petitioner's husband detained at Central Prison, Puzhal, Chennai-600 066.

For Petitioner : Mr.C.C.Chellappan

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 herein is the wife of the detenu viz., Siva @ Sivakumar, aged 43 years, son of Mohanasundaram, detained at Central Prison, Puzhal, Chennai-600 066, has come forward with this petition challenging the detention order passed by the 2nd respondent dated 29.11.2023 slapped on her husband, branding him as "Goonda" under the



HCP.No.2546 of 2023

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].

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 submitted that the order of Detention passed by the Detaining Authority is vitiated for material irregularities, as the English version of the remand order dated 12.11.2023, has not been translated correctly to the vernacular language. It is stated that since there is an improper translation, the detainee is deprived of his valuable right to make effective representation.

4. On a perusal of the Booklet, in particular, Page No.59, it is seen that, in the 3rd line of the English version of the remand order, the learned



HCP.No.2546 of 2023

Metropolitan Magistrate has mentioned as 'Arrest informed'. However, in the vernacular version available at Page No.61 of the Booklet, the said portion of the remand order has not been translated and incorporated. Hence, this Court finds that there is an improper translation of the said order in the vernacular version.

5.It is in the said circumstances, this Court finds that serious prejudice is caused to the detenu on account of improper translation in making effective representation against the Detention Order and that the Detention Order passed by the Detaining Authority is vitiated.

6.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."



HCP.No.2546 of 2023

7.In view of the ratio laid down by the Hon'ble Supreme Court and in view of the aforesaid reasons, this Court is of the view that the detention order is liable to be quashed.

8.Accordingly, the detention order passed by the 2nd respondent in No.632/BCDFGISSSV/2023, dated 29.11.2023, is hereby set aside and the Habeas Corpus Petition is allowed. The detenu viz., Siva @ Sivakumar, aged 43 years, son of Mohanasundaram, detained at Central Prison, Puzhal, Chennai-600 066, 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]
27.03.2024

Index: Yes/No

Anu



HCP.No.2546 of 2023

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To

1.Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai-600 009.

2.The Commissioner of Police,
Greater Chennai.

3.The Inspector of Police,
F-5 Choolaimedu Police Station,
Chennai.

4.The Superintendent,
Central Prison, Puzhal,
Chennai.

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

6.The Public Prosecutor,
High Court, Madras.



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HCP.No.2546 of 2023

M.S.RAMESH, J.
and
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H.C.P.No.2546 of 2023

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