



H.C.P.(MD) No.4 of 2024

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.06.2024

CORAM:

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA
and
THE HONOURABLE MR.JUSTICE K.RAJASEKAR

H.C.P.(MD) No.4 of 2024

Shakila Banu

... Petitioner

-vs-

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

2.The Commissioner of Police
Tiruchirappalli City
Tiruchirappalli

3.The Superintendent of Prison
Central Prison
Tiruchirappalli

... 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 in detention order in C.No. 104/Detention/C.P.O/T.C/2023, dated 20.11.2023, on the file of the second respondent and quash the same and direct the respondents herein to produce



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the body of the petitioner's son, namely, Jaheer Hussain, son of Abdul Asath, aged about 19 years, now confined in Central Prison, Tiruchirappalli, before this Court and set him at liberty forthwith.

For Petitioner : Mr.K.M.Karunakaran

For Respondents : Mr.A.Thiruvadi Kumar
Additional Public Prosecutor

ORDER

[Order of the Court was made by A.D.JAGADISH CHANDIRA, J.]

The petitioner is the mother of the detenu viz., Jaheer Hussain, son of Abdul Asath, aged about 19 years. The detenu has been detained by the second respondent by his order in C.No.104/Detention/C.P.O/T.C/2023, dated 20.11.2023, holding him to be a "Goonda", as contemplated under Section 2(f) of Tamil Nadu Act 14 of 1982. The said order is under challenge in this habeas corpus petition.

2. We have heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the respondents. We have also perused the records produced by the Detaining Authority.



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3. Though several grounds have been raised in the habeas corpus petition, learned counsel for the petitioner submitted that though the Detaining Authority, in paragraph No.3 of the impugned detention order, has stated that “Later his remand period has been extended till 01.12.2023”, the said remand extension order was not furnished to the detenu. It is, therefore, stated that the detenu is deprived of his valuable right to make an effective representation.

4. Learned Additional Public Prosecutor appearing for the respondents refuted the above submission of the learned counsel for the petitioner and submitted that the said remand extension order is very much available in page No.58 of the booklet filed by the respondent along with the counter affidavit.

5. In view of the above submission of the learned Additional Public Prosecutor, we perused the booklet furnished to the petitioner. On a perusal of the Booklet, we find that the order extending the remand till 01.12.2023 is not available. Conversely, the said remand extension order is available in Page No.58 of the booklet filed by the respondents along with the counter



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affidavit. Therefore, we are of the view that the non-furnishing of the said document would deprive the detenu of his valuable right to make an effective representation. It is in the said circumstances, this Court finds that the impugned detention order passed by the Detaining Authority is vitiated.

6. In this context, it is useful to refer to the Judgment of the Honourable Supreme Court in the case of **Powanammal vs. State of Tamil Nadu**, reported in **(1999) 2 SCC 413**, wherein the Apex Court, after discussing the safeguards embodied in Article 22(5) of the Constitution of India, observed that the detenu should be afforded an opportunity of making a 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. The relevant portion of the said decision is extracted hereunder:

"6. The short question that falls for our consideration is whether failure to supply the Tamil version of the order of remand passed in English, a language not known to the detenue, would vitiate her further detention.

...

...

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



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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 nonsupply 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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7. We find that the above cited ***Powanammal***'s case applies in all force to the case on hand as we find that non-furnishing of the remand extension order relied on by the Detaining Authority to the detenu, has impaired his constitutional right to make an effective representation against the impugned preventive detention order. To be noted, this constitutional right is ingrained in the form of a safeguard in Clause (5) of Article 22 of the Constitution of India. We, therefore, have no hesitation in quashing the impugned detention order.

8. In the result, the Habeas Corpus Petition is allowed and the order of detention in C.No.104/Detention/C.P.O/T.C/2023, dated 20.11.2023, passed by the second respondent is set aside. The detenu, viz., Jaheer Hussain, son of Abdul Asath, aged about 19 years, is directed to be released forthwith unless his detention is required in connection with any other case.

[A.D.J.C., J.]

[K.R.S., J.]

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NCC : Yes / No
Index : Yes / No
Internet : Yes / No

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Home, Prohibition and Excise Department,
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- 2.The Commissioner of Police,
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- 3.The Superintendent of Prison,
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- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
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