



H.C.P.(MD) No.181 of 2024

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.07.2024

CORAM:

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

H.C.P.(MD) No.181 of 2024

Dharmaraj
(Now confining at Madurai Central Prison)

... Petitioner

-VS-

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

2.The Commissioner of Police,
Office of the Commissioner of Police,
Madurai City,
Madurai.

3.The Superintendent of Prison,
Madurai Central Prison,
Madurai District.

... Respondents



H.C.P.(MD) No.181 of 2024

WEB CONTENT

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus to call for the entire records connected with the detention order of the Respondent No.2 in No.104/BCDFGISSSV/2023, dated 23.12.2023 and quash the same and direct the respondents to produce the body or person of the detenu by name Dharmaraj, son of Murugan, aged about 28 years, now detained as "Drug Offender" at Madurai Central Prison before this Court and set him at liberty forthwith.

For Petitioner : Mr.R.Alagumani

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 detenu viz., Dharmaraj, son of Murugan, aged about 28 years. The detenu has been detained by the second respondent by his order in No.104/BCDFGISSSV/2023, dated 23.12.2023 holding him to be a "Drug Offender", as contemplated under Section 2(e) of Tamil Nadu Act 14 of 1982. The said order is under challenge in this habeas corpus petition.



H.C.P.(MD) No.181 of 2024

WEB COPY

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.

3. Though several points have been raised by the learned counsel for the petitioner, it is stated that the detention order is liable to be quashed on the ground that certain documents, which were relied on by the detaining authority in Booklet No.II at Page Nos.65 to 68, are illegible. Despite the specific request made by the petitioner, the copies of the same have not been furnished to the detenu. Hence, it is submitted that the detenu was deprived of making effective representation.

4. On a perusal of the Booklet Volume No.II, it is seen that Page Nos. 65 to 68, which are some relied on documents furnished to the detenu, are illegible. This furnishing of illegible copy would deprive the detenu of making effective representation to the authorities against the order of detention.



H.C.P.(MD) No.181 of 2024

WEB COPY

5. 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:

"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



WEB COPY

H.C.P.(MD) No.181 of 2024

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."

6. 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 legible copy of the documents relied on by the Detaining Authority at Page Nos.65 to 68 of the Booklet No.II. This furnishing of illegible copy 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



H.C.P.(MD) No.181 of 2024

WEB COPY 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.

7. In the result, the Habeas Corpus Petition is allowed and the order of detention in No.104/BCDFGISSSV/2023, dated 23.12.2023, passed by the second respondent is set aside. The detenu, viz., Dharmaraj, aged about 28 years, son of Murugan, 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.]

04.07.2024

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

am



H.C.P.(MD) No.181 of 2024

WEB COPY

To:

- 1.The Principal Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise Department,
Fort St. George,
Chennai-600 009.
- 2.The Commissioner of Police,
Office of the Commissioner of Police,
Madurai City,
Madurai.
- 3.The Superintendent of Prison,
Madurai Central Prison,
Madurai District.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



H.C.P.(MD) No.181 of 2024

A.D.JAGADISH CHANDIRA, J.
AND
K.RAJASEKAR, J.
am

H.C.P.(MD) No.181 of 2024

04.07.2024