



H.C.P.(MD) No.688 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.09.2024

CORAM:

**THE HONOURABLE MR.JUSTICE C.V. KARTHIKEYAN
and
THE HON'BLE MR.JUSTICE J.SATHYA NARAYANA PRASAD**

H.C.P.(MD) No.688 of 2024

Natchiyar

... Petitioner/Mother of the detenu

Vs.

1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise (XIV) Department,
State of Tamil Nadu,
Secretariat,
Chennai-600 009.

2.The District Collector and District Magistrate,
Tirunelveli District,
Tirunelveli.

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

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to
issue a writ of Habeas Corpus to call for records pertaining to the



H.C.P.(MD) No.688 of 2024

detention order passed by the second respondent in M.H.S.Confdl. No. 116/2023, dated 20.09.2023 and quash the same and consequently direct the respondents to produce the body or person of Chinnadurai, son of Uikkattan, aged about 22 years, confined in Central Prison, Palayamkottai, before this Court and set him at liberty.

For Petitioner : Mr.A.Ebenezer

For Respondents : Mr.S.Ravi
Additional Public Prosecutor

ORDER

The petitioner is the mother of the detenu viz., Chinnadurai, son of Uikkattan, aged about 22 years. The detenu has been detained by the second respondent by his order in M.H.S.Confdl. No.116/2023, dated 20.09.2023 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



H.C.P.(MD) No.688 of 2024

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 the detenu was furnished with the copy of the 'Remand Order' relied on by the Detaining Authority, more particularly at Page No.147 of the booklet and the Remand Order, furnished to the detenu, has not been properly translated in the vernacular language at Page No.149 of the booklet. Hence, it is submitted that the detenu was deprived of making effective representation.

4. The earlier petition filed in H.C.P(MD)No.1411 of 2023 had suffered an order of dismissal by a Co-ordinate Bench of this Court by order dated 15.03.2023.

5. Mr.S.Ravi, learned Additional Public Prosecutor had placed reliance on (i) the judgment reported in 2006 (2) MLJ (Crl) 699,



H.C.P.(MD) No.688 of 2024

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Geetha -vs- State of Tamil Nadu, rep. by Secretary to Government and another, for the proposition that a detainee cannot raise second Habeas Corpus Petition, a point which was available but not raised during the hearing of the first Habeas Corpus Petition and (ii) the judgment reported in **2009 (2) CIJ 197, Mohan @ Mohan Reddy -vs- Commissioner of Police and another**, for the proposition that a second Habeas Corpus Petition can be filed only on new grounds that were not available at the time when the first Habeas Corpus Petition was dismissed.

6. It had been however held by the Hon'ble Supreme Court that there is no bar in filing a second Habeas Corpus Petition. It had also been held that the earlier order will not act as *res judicata*. The Hon'ble Supreme Court of India in **Ghulam Sarwar -vs- Union of India and others, [reported in AIR 1967 SC 1335]**, in paragraph No.9, had observed as follows:-

“.... in India the person detained can file original petition for enforcement of his fundamental right to liberty before a court other than the High Court, namely, this Court. The order



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H.C.P.(MD) No.688 of 2024

of the High Court in the said writ is not res judicata as held by the English and the American Courts either because it is not a judgment or because the principle of res judicata is not applicable to a fundamentally lawless order. If the doctrine of res judicata is attracted to an application for a writ of habeas corpus, there is no reason why the principle of constructive res judicata cannot also govern the said application, for the rule of constructive res judicata is only a part of the general principles of the law of res judicata, and if that be applied, the scope of the liberty of an individual will be considerably narrowed. The present case illustrates the position. Before the High Court the petitioner did not question the constitutional validity of the President's order made under Article 359 of the Constitution. If the doctrine of constructive res judicata be applied, this Court, though it is enjoined by the Constitution to protect the right of a person illegally detained, will become powerless to do so. That would be whittling down the wide sweep of the constitutional protection.”

[Emphasis Supplied]



H.C.P.(MD) No.688 of 2024

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7. On a careful perusal of the papers served on the detenu reveals that he had been served with a copy of the remand order dated 13.09.2023. The remand order dated 13.09.2023 remanding him to judicial custody by the Judicial Magistrate No.III, Tirunelveli. The learned Judicial Magistrate while passing the remand order had among other remarks also stated as follows :

*“Arrest is intimated to his brother.
Accused needs free legal-aid- assistance.”*

When translated these two sentences into Tamil, it has been translated as follows :

“கைது பற்றி அவரது சகோதரருக்கு தகவல்
தெரிவிக்கப்பட்டது. கைதுக்கான காரணமும் இலவச
சட்ட உதவி பற்றி விளக்கி கூறப்பட்டது.”

The learned judicial Magistrate has noted that the detenu had actually sought for free legal-aid assistance. While translating, it had been translated that he had been informed about the availability of free legal aid. The purport of these two sentences are totally different. The detenu had already requested that he requires free legal-aid assistance.



H.C.P.(MD) No.688 of 2024

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8. It is seen that Page No.149 of the Booklet, which is the Remand Order, furnished to the detenu, has not been properly translated in the vernacular language. This improper translation of vernacular language copy of the vital document would deprive the detenu of making effective representation to the authorities against the order of detention.

9. 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



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H.C.P.(MD) No.688 of 2024

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



H.C.P.(MD) No.688 of 2024

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."

10. We find that the above cited **Powanammal's** case applies in all force to the case on hand as we find that the improper translation of the Remand Order made by the authority concerned, which is available at Page No.149 of the Booklet in the vernacular language relied on by the Detaining Authority. This furnishing of improper translation in the vernacular language 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, even though the earlier H.C.P.(MD)No.1411 of 2023 has been dismissed by the Co-ordinate Division Bench of this Court, dated 15.03.2023.



H.C.P.(MD) No.688 of 2024

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11. In the result, the Habeas Corpus Petition is allowed and the order of detention in M.H.S.Confdl. No.116/2023, dated 20.09.2023 passed by the second respondent is set aside. The detenu, viz., Chinnadurai, son of Uikkattan, aged about 22 years, is directed to be released forthwith unless his detention is required in connection with any other case.

[C.V.K., J.] [J.S.N.P., J.]

09.09.2024

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

RM



H.C.P.(MD) No.688 of 2024

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To:

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State of Tamil Nadu,
Home, Prohibition and Excise Department,
Secretariat,
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2. The District Collector and District Magistrate,
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Tirunelveli.
3. The Superintendent of Prison,
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Tirunelveli.
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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H.C.P.(MD) No.688 of 2024

C.V. KARTHIKEYAN, J.
AND
J.SATHYA NARAYANA PRASAD, J.

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H.C.P.(MD) No.688 of 2024

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