



H.C.P.(MD) No.429 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.09.2024

CORAM:

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

H.C.P.(MD) No.429 of 2024

Ajithkumar @ Aakku

...Petitioner/detenu

Vs.

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

2.The District Collector and District Magistrate,
Office of the District Collector and District Magistrate
Madurai District.

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

... 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 connected with



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the detention order of the second respondent in B.C.D.F.G.I.S.S.S.V.No. 03/2024, dated 21.03.2024 and quash the same and direct the respondents to produce the body or person of the detenu by name, Ajithkumar @ Aakku, S/o.Baluchamy aged about 26 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.S.Ravi

Additional Public Prosecutor

ORDER

The petitioner is the detenu, viz., Ajithkumar @ Aakku, S/o.Baluchamy aged about 26 years. The detenu has been detained by the second respondent by his order in B.C.D.F.G.I.S.S.S.V.No.03/2024, dated 21.03.2024 holding him to be a "Drug Offender", as contemplated under Section 2(e) of the Tamil Nadu Act 14 of 1982. The said order is under challenge in this Habeas Corpus Petition.



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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 the detenu has not been furnished with a translated copy of the 'Remand Order' relied on by the Detaining Authority, more particularly at Page No.105 of the booklet, in the vernacular language, though the detenu seeking for Tamil version. Hence, it is submitted that the detenu was deprived of making effective representation.

4. On a perusal of the Booklet, it is seen that Page No. 105, which is the Remand Order, furnished to the detenu in English version. Though the detenu has seeking Tamil Version of remand order and the same has not been furnished in the vernacular language. This non-



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furnishing of Tamil Version of the vital document would deprive the detenu of making effective representation to the authorities against the order of detention.

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,



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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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6. We find that the above cited **Powanammal**'s case applies in all force to the case on hand. This non-furnishing of Tamil Version of remand order 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.

7. In the result, the Habeas Corpus Petition is allowed and the order of detention in B.C.D.F.G.I.S.S.S.V.No.03/2024, dated 21.03.2024 passed by the second respondent is set aside. The detenu, viz., Ajithkumar @ Aakku, S/o.Baluchamy aged about 26 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.]

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NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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Note: The Registry is directed to call for explanation from the learned Judicial Magistrate, Vadipatty, who so functioned on 01.03.2024. Registry may direct the learned Chief Judicial Magistrate, Madurai, to determine who was actually the Magistrate who was functioning on 01.03.2024 and the name of the actual Officer who had passed the remand order on 01.03.2024 and ask the learned Judicial Magistrate concerned to type out his own remand order and indicate how long it took him to read his own order and an explanation as to why a legible copy was not written down by him in the first instance.

2. Explanation by the learned Judicial Magistrate to be forwarded by **03.10.2024**. A copy of Page No.105 may be enclosed along with this order by the Registry and forwarded to the Chief Judicial Magistrate, Madurai, for forwarding the same to the concerned Judicial Magistrate.

3. Registry should call for explanation to be submitted on or before **03.10.2024**.



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- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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