



H.C.P.(MD) No.637 of 2024

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.06.2024

CORAM:

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

H.C.P.(MD) No.637 of 2024

N.Esakkithai

... Petitioner

-VS-

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

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

3.The Inspector of Police,
Thisayanvillai Police Station,
Tirunelveli.

4.The Superintendent of Police,
Central Prison,
Palayamkottai.

... Respondents



H.C.P.(MD) No.637 of 2024

WEB COPY

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 passed in Detention Order in M.H.S.Confdl.No.105 of 2023, dated 13.09.2023 passed by the second respondent herein and set aside the same as illegal and direct the respondents to produce the body or person of petitioner's brother namely Sudalaikkannu @ Durai, Male aged 35 years, S/o.Esakkipandi (now detained at Central Prison, Palayamkottai) before this Court and set him at liberty.

For Petitioner : Mr.G.Karuppasamypandiyar

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 sister of the detenu viz., Sudalaikkannu alias Durai, son of Esakkipandi, aged about 35 years. The detenu has been detained by the second respondent by his order in M.H.S.Confdl.No.105/2023, dated 13.09.2023 holding him to be a "Goonda", as contemplated under Section 2(f) of



H.C.P.(MD) No.637 of 2024

WEB COURT 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.

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 illegible copy of the remand order, which is available at page No.53. 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.53 of the Booklet Volume-I, which is the remand order furnished to the detenu, is illegible. This furnishing of illegible copy 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, 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



H.C.P.(MD) No.637 of 2024

WEB COPY

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."

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 document relied on by the Detaining Authority at Page No.53 of the Booklet Volume-I. This furnishing of illegible copy to the detenu, has impaired his constitutional right to make an effective representation against the impugned



H.C.P.(MD) No.637 of 2024

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 M.H.S.Confdl.No.105 of 2023, dated 13.09.2023, passed by the second respondent is set aside. The detenu, viz., Sudalaikannu alias Durai, aged about 35 years, son of Esakkipandi, 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.]

19.06.2024

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

am



H.C.P.(MD) No.637 of 2024

WEB COPY

To:

- 1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai-600 009.
- 2.The District Collector and District Magistrate,
Tirunelveli District,
Tirunelveli.
- 3.The Inspector of Police,
Thisayanvillai Police Station,
Tirunelveli.
- 4.The Superintendent of Police,
Central Prison,
Palayamkottai.
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



H.C.P.(MD) No.637 of 2024

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

H.C.P.(MD) No.637 of 2024

19.06.2024