



H.C.P(MD)No.702 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.08.2024

CORAM:

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

H.C.P.(MD) No.702 of 2024

Nagarathinam

... Petitioner

Vs

1. The Principal Secretary to Government, State of Tamil Nadu,
Home, Prohibition and Excise Department,
Secretariat,
Chennai - 9.

2. The District Collector and District Magistrate,
O/o.The District Collector and District Magistrate,
Theni.
Theni 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 the detention order of the Respondent No.2 in Detention order No. 51/2023, dated 23.08.2023 and quash the same and to direct the Respondents to produce the body or person of the detenu by name Ondi



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@ Ollikutchi, aged about 24 years, Son of Sangili @ Sangili Karuppan, now confining as “Goonda” at Madurai Central Prison before this Court and set him at liberty forthwith.

For Petitioner : Mr.R.Prakash

For Respondents : Mr.S.Ravi

Additional Public Prosecutor.

ORDER

The petitioner is the father of the detenu viz., Ondi @ Ollikutchi, aged about 24 years, Son of Sangili @ Sangili Karuppan. The detenu has been detained by the second respondent by his order in Detention order No.51/2023, dated 23.08.2023 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 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 copy of the 'initial Remand Order' relied on by the Detaining Authority. It is further contended that there is improper translation of the grounds of detention made by the authority concerned, which is available at Page No. 36, in the vernacular language. Hence, it is submitted that the detenu was deprived of making effective representation.

4. On a perusal of the grounds of detention, it is seen that in the grounds of detention, Paragraph No.5 has been wrongly translated in vernacular language. This improper translation 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



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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 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



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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 the improper translation of the grounds of detention made by the authority concerned, which is available at Page No. 36, in the vernacular language. 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)



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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 Detention order No.51/2023, dated 23.08.2023, passed by the second respondent is set aside. The detenu, viz., Ondi @ Ollikutchi, aged about 24 years, Son of Sangili @ Sangili Karuppan, 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.)
21.08.2024

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

To

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4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
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C.V.KARTHIKEYAN, J.
and
J.SATHYA NARAYANA PRASAD, J.

PNM

ORDER MADE IN
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