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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.07.2024

CORAM

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA
AND
THE HONOURABLE MR.JUSTICE K.RAJASEKAR

H.C.P.(MD)No.624 of 2024

Petchiammal ... Petitioner / Mother of the Detenu

Vs.

1.State of Tamil Nadu,
Represented by the Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai – 600 009.

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

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

4.The Superintendent,
District Jail,
Perurani,
Thoothukudi District. ... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus, calling for the entire records, connected with

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the detention order passed in H.S.(M) Confdl.No.184/2023 dated 28.12.2023 on the file of the second respondent herein and quash the same and direct the respondents to produce the detenu or body of the detenu namely the petitioner's son i.e., Balasing, aged about 42 years, S/o.Muthupandi, now detained at the District Jail, Perurani, Thoothukudi Distict, before this Court and set him at liberty forthwith.

For Petitioner : Mr.N.Pragalathan

For Respondents : Mr.A.Thiruvadikumar
Additional Public Prosecutor

ORDER

(Order of the Court was made by A.D.JAGADISH CHANDIRA,J.)

The petitioner is the mother of the detenu viz., Balasing, aged about 42 years, S/o.Muthupandi. The detenu has been detained by the second respondent by his order in H.S.(M) Confdl.No.184/2023 dated 28.12.2023 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 in the Habeas Corpus Petition, the learned counsel for the petitioner submitted that the Detaining Authority, while detaining the detenu, has relied on the remand extension order, which is available at Page No.201 of Volume I of the Booklet and it is in English language. Though the petitioner asked for translated copy of the same in the vernacular language, the same has not been furnished by the Detaining Authority. It is, therefore, stated that the detenu is deprived of his valuable right to make an effective representation.

4. On perusal of the Booklet, it is seen that the translated copy of the remand extension order at Page No.201 of Volume I of the Booklet, have not been furnished to the detenu. Therefore, we are of the view that the non-furnishing of translated copy of the said document in the vernacular language would deprive the detenu of his valuable right to make an effective representation. It is in the said circumstances, this Court finds that the impugned detention order passed by the Detaining Authority is vitiated.

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

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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:

> *"6. The short question that falls for our consideration is whether failure to supply the Tamil version of the order of remand passed in English, a language not known to the detenue, would vitiate her further detention.*
>
> *...*
>
> *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*

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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 translated copy of the remand extension order relied on by the Detaining Authority at Page No.201 of Volume I of the Booklet, in 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.

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7. In the result, the Habeas Corpus Petition is allowed and the order of detention in H.S.(M) Confdl.No.184/2023 dated 28.12.2023 passed by the second respondent is set aside. The detenu, viz., Balasing, S/o.Muthupandi, aged about 42 years, 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.)
10.07.2024

NCC : Yes / No
Index : Yes / No
Lm

To
1.The Additional Chief Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise Department,
Secretariat, Chennai – 600 009.

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

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

4.The Superintendent,
District Jail,
Perurani,Thoothukudi District.

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

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and
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