



H.C.P.(MD)No.758 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 19.11.2024

CORAM

**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
and
THE HONOURABLE MS.JUSTICE R.POORNIMA**

H.C.P.(MD)No.758 of 2024

Kai @ Mohamed Khan

... 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,
Ramanathapuram District.
- 3.The Superintendent of Police,
Madurai Central Prison,
Madurai District.

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India praying for the issue of a Writ of Habeas Corpus, calling for the entire records connected with the detention of the second respondent in S.R.No.10/Goonda/2024 dated 06.05.2024 and quash the same and direct the respondents to produce the body or person of the detenu by name Kai @ Mohamed Khan, S/o.Seeni Mohamed aged about 30 years, now



H.C.P.(MD)No.758 of 2024

detained as “Goonda” at Madurai Central Prison before this Court and set him at liberty forthwith.

For Petitioner : Dr.R.Alalgumani

For Respondents : Mr.T.Senthil Kumar
Addl. Public Prosecutor.

ORDER

(Order of the court was delivered by G.R.Swaminathan, J.)

Heard both sides.

2.The petitioner was detained as “Goonda” by the District Collector and District Magistrate, Ramanathapuram vide detention order dated 06.05.2024. Crime No.35 of 2024 registered on the file of Keelakarai Police Station is the ground case based on which the detention order came to be passed. The case of the petitioner is that the Tamil version of the remand order as well as the remand extension order which were relied upon by the detaining authority for passing detention were not supplied to the detenu. As a result, the petitioner was not able to make an effective representation.



H.C.P.(MD)No.758 of 2024

3.The learned counsel for the petitioner relied upon the decision of the Hon'ble Supreme Court reported in **(1999) 2 SCC 413 (Powanammal Vs. State of Tamil Nadu)**. Paragraph Nos.13 to 15 of the said decision read as follows:-

*“13.In **Madan Lal Anand v. Union of India**, AIR (1990) SC 176, one of the grounds of challenge to the order of detention was non-supply of copies of documents. The detaining authority relied upon three civil miscellaneous applications filed in a civil revision petition. Copies of the miscellaneous petitions were supplied to the detainee but the copy of the civil revision petition in which the miscellaneous petitions were filed, was not furnished. It was observed that mentioning of civil revision petition in the grounds of detention was merely to identify the miscellaneous applications and having regard to the facts and circumstances of that case the detainee was not prejudiced due to non-supply of the copies of the documents to him and further, the other revision petitions, copies of which were not supplied, were mentioned to point out the fact of shifting of the factory premises without giving any specific address of the factory and that fact in the grounds of detention did not necessarily require the detaining authority to supply copies of the revision petitions. On those facts it was held that non-supply of the document did not cause any prejudice to him. This case falls in the aforementioned second category of documents.*



WEB COPY



H.C.P.(MD)No.758 of 2024

14.Kamarunnissa v. Union of India, AIR (1991) SC 1640 was also a case arising under Section 3 of the COFEPSA Act. There the documents that were not supplied to the detainee were merely referred to in the grounds of detention and were not relied upon by the detaining authority while arriving at the subjective satisfaction. The observation of the court that mere statement that the documents were not supplied was not sufficient and that the detainee must show that non-supply of documents has im-paired his right to make representation, has to be understood having regard to the fact that the document therein were merely referred to in the grounds of detention but were not relied upon by the detaining authority for reaching subjective satisfaction.

15.Adverting to the facts of this case, the appellant has made a repre- sentation for supply of Tamil version of the copy of order of remand and specifically stated that the detainee could not understand the English language. Admittedly, the Tamil version of order of remand was not furnished to her. A perusal of the grounds shows that the order of remand was relied upon by the second respondent to reach subjective satisfaction, so the detainee need not show that any prejudice was caused to her due to non-supply of the Tamil version of order of remand. Therefore, the High Court is not correct in holding that non-furnishing of the copy of the order of remand would not in any way prejudice the detainee.”



H.C.P.(MD)No.758 of 2024

WEB COPY

4.The said decision squarely applies to the case on hand. Any relied upon document will have to be furnished to the detenu. In this case, the documents were in fact furnished. But then, the documents are in English. There was an obligation on the part of the detaining authority to supply the Tamil version. The Tamil version was not supplied. This has infringed the petitioner's right guaranteed under Article 22 of the Constitution of India.

5.In this view of the matter, the impugned order is set aside and the habeas corpus petition is allowed. The petitioner shall be set at liberty unless his detention is otherwise warranted by law.

(G.R.S. J.) & (R.P. J.)
19.11.2024

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

Issue order copy on 20.11.2024.



H.C.P.(MD)No.758 of 2024

To:-

WEB COPY

- 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,
Ramanathapuram District.
- 3.The Superintendent of Police,
Madurai Central Prison,
Madurai District.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



H.C.P.(MD)No.758 of 2024

G.R.SWAMINATHAN, J.
and
R.POORNIMA, J.

ias

H.C.P.(MD)No.758 of 2024

19.11.2024