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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :16.10.2024

CORAM:

THE HONOURABLE **MR.JUSTICE C.V. KARTHIKEYAN**

**AND**

THE HONOURABLE **MS.JUSTICE R.POORNIMA**

H.C.P.(MD) No.757 of 2024

Abimanyu @ Athiban ... Petitioner / Detenue

-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,
Theni District

3.The Superintendent,
Central Prison
Madurai ... 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 the detention order of the second respondent in detention order No.19 of 2024 dated



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16.04.2024 and quash the same and direct the respondents to produce the body or person of the detenue by name Abimanyu@ Athiban, son of Tamilselvan, aged about 29 years now detained as 'DRUG OFFENDER' at Madurai Central Prison, before this Court and set him at liberty forthwith

For Petitioner : Dr.R.Alagumani

For Respondents : Mr.S.Ravi
Additional Public Prosecutor

**O R D E R**

The petitioner, detenue namely, Abimanyu@ Athiban, son of Tamilselvan, aged about 29 years . The detenu has been detained by the second respondent by his order in detention order No.19 of 2024 dated 16.04.2024 , holding him to be a "DRUG OFFENDER", as contemplated under Section 2(e) 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 the learned counsel for the petitioner has raised several other grounds to assail the order of detention, he has mainly focused his argument on the ground that the detaining authority, while detaining the detenu, has not furnished him with the original remand order relied on by him. This deprived the detenu from making effective representation. Therefore, on this ground, the detention order is liable to be quashed.

4. On consideration of the submissions made on either side and upon perusal of the documents available on record of the booklet, it is clear that the original remand order has not been furnished to the detenue. Thus the impugned detention order is liable to be set aside on this ground.

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



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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 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.*



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*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 original remand order was not furnished to the detenue. This non furnishing of remand order in the translated version 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 D.O.No.19 of 2024 dated 16.04.2024 , passed by the second respondent is set aside. The detenu, viz., Abimanyu@ Athiban, son of Tamilselvan, aged about 29 years , is directed to be released forthwith unless his detention is required in connection with any other case.

**[C.V.K., J.] & [R.P., J.]**

**16.10.2024**

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
*aav*



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Madurai Bench of Madras High Court,
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**C.V. KARTHIKEYAN, J.**

**AND**

**R.POORNIMA, J.**

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