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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.10.2024

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN
and
THE HON'BLE Ms.JUSTICE R.POORNIMA

H.C.P.(MD) No.897 of 2024

Parvathi

... Petitioner

Vs

1. 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,
Cuddalore.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, to call for the records in detention passed in detention order H.S.(M) Confdl No. 22/2024 on 30.03.2024 passed by the 2nd respondent herein and set aside the same as illegal and direct the respondents to produce the body or person of petitioner's brother namely Chinnathambi, S/o.Subbiah, aged about 25 years, male (now detained at Central Prison, Cuddalore) before this Court and set him at liberty.

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For Petitioner : Mr.C.Karuppasamy Pandiyan
For Respondents : Mr.S.Ravi
Additional Public Prosecutor.

O R D E R

The petitioner is the sister of the detenu viz., Chinnathambi, S/o.Subbiah, aged about 25 years. The detenu has been detained by the second respondent by his order in Detention Order in H.S.(M) Confdl No. 22/2024, dated 30.03.2024 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.

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

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copy of the 'Accident Register' relied on by the Detaining Authority, in vernacular language. Hence, it is submitted that the detenu was deprived of making effective representation.

4. On a perusal of the Booklet, it is seen that the Accident Register has not been furnished to the detenu in vernacular language. The non-furnishing 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 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:

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"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 Accident Register has not been furnished to the detenu in vernacular language. The non-furnishing of Accident Register 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.

7. In the result, the Habeas Corpus Petition is allowed and the order of detention in Detention Order in H.S.(M) Confdl No. 22/2024, dated 30.03.2024, passed by the second respondent is set aside.

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The detenu, viz., Chinnathambi, S/o.Subbiah, aged about 25 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.)
15.10.2024

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

PNM
To
1. 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,
Cuddalore.

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

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C.V.KARTHIKEYAN, J.
and
R.POORNIMA, J.

PNM

ORDER MADE IN
H.C.P.(MD) No.897 of 2024

15.10.2024