



H.C.P.(MD) No.1445 of 2023

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.04.2024

CORAM:

**THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA
and
THE HONOURABLE MR.JUSTICE K.RAJASEKAR**

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Marichamy

... Petitioner

-VS-

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

2.The District Collector cum
District Magistrate
District Collector Office
Tenkasi District

3.The Superintendent of Prison
Central Prison
Palayamkottai
Tirunelveli 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 in detention order in M.H.S.Confdl.No.73/2023, dated 26.10.2023, on the file of the second



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respondent and quash the same and direct the respondents herein to produce the body of the petitioner's son, namely, Muthukumar, son of Marisamy, aged about 26 years, now confined in Central Prison, Palayamkottai, before this Court and set him at liberty forthwith.

For Petitioner : Mr.K.Sivabalan

For Respondents : Mr.A.Thiruvadi Kumar
Additional Public Prosecutor

ORDER

[Order of the Court was made by A.D.JAGADISH CHANDIRA, J.]

The petitioner is the father of the detenu viz., Muthukumar, aged about 26 years. The detenu has been detained by the second respondent by his order in M.H.S.Confdl.No.73/2023, dated 26.10.2023, 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 was furnished with illegible copy of the Special Report relied on by the Detaining Authority, more particularly at Page No.23 of the booklet and the endorsement made by the authority concerned for receiving the said document, which is available at the same page, has not been properly translated in the 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 Page No.23 of the Booklet, which is the Special Report, furnished to the detenu, is illegible and it is also found that the endorsement made by the authority concerned for receiving the said document, which is available at the same page, has not been properly translated in the vernacular language. This furnishing of illegible copy and 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***



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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:

"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



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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 legible copy of the document relied on by the Detaining Authority at Page No.23 of the Booklet and the improper translation of the endorsement made by the authority concerned for receiving the said document, which is available at the same page, in the vernacular language. This furnishing of illegible copy and 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) 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 M.H.S.Confdl.No.73/2023, dated 26.10.2023, passed by the second respondent is set aside. The detenu, viz., Muthukumar, son of Marisamy, aged about 26 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.]

04.04.2024

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

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To:

- 1.The Principal Secretary to Government,
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- 2.The District Collector cum
District Magistrate,
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- 3.The Superintendent of Prison,
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- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
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