



H.C.P.(MD) No.1466 of 2023

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.04.2024

CORAM:

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

H.C.P.(MD) No.1466 of 2023

M.Ayyadurai

... Petitioner

-VS-

1.State of Tamil Nadu,
Rep. 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.

... 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 connected with the detention



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order passed in H.S.(M) Confdl. No.126/2023, dated 26.09.2023 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.d., Esakki Ganesh, aged about 29 years, S/o.Ayyadurai, now detained at the Central Prison, Palayamkottai, before this Court and set him at liberty forthwith.

For Petitioner : Mr.N.Pragalathan
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., Esakki Ganesh, son of Ayyadurai, aged about 29 years. The detenu has been detained by the second respondent by his order in H.S(M) Confdl.No.126/2023, dated 26.09.2023 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 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 remand order, which is available at Page No.329 of the booklet has not been properly translated in vernacular language. Hence, it is submitted that the detenu was deprived of making effective representation.

4. The learned Additional Public Prosecutor appearing for the respondents would submit that some of the co-accused, who are also arrested in the same crime number, have filed the H.C.P(MD)Nos.1243, 1245 and 1248 of 2023 and the same were dismissed by this Court.

5. In reply, the learned counsel for the petitioner would submit that in those applications the specific point for non-furnishing of legible copy was not raised.

6. On a perusal of the Booklet, it is seen that Page No.329 of the Booklet, which is the remand order, furnished to the detenu, has not been properly translated. This furnishing of improper translation of the vital document



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would deprive the detenu of making effective representation to the authorities against the order of detention.

7. 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:

"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



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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.

...

...

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."

8. We find that the above cited ***Powanammal***'s case applies in all force to the case on hand as we find that the improper translation of the remand



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order, which is available at Page No.329, in the vernacular language. This furnishing of 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.

9. In the result, the Habeas Corpus Petition is allowed and the order of detention in H.S(MD)Confdl.No.126/2023, dated 26.09.2023, passed by the second respondent is set aside. The detenu, viz., Esakki Ganesh, aged about 29 years, son of Ayyadurai, 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.]

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NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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- 2.The District Collector and District Magistrate,
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Thoothukudi.
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- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
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