



H.C.P.(MD) No.1449 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.1449 of 2023

Parish

... Petitioner

-VS-

- 1.The Additional Chief Secretary,
Home, Prohibition and Excise Department,
Secretariat,
Chennai-600 009.
- 2.The District Collector and District Magistrate,
Thoothukudi District,
Thootukudi.
- 3.The Inspector of Police,
Tiruchendur Police Station,
Thoothukudi District.
- 4.The Superintendent of Central Prison,
Palayamkottai Central Prison,
Tirunelveli.

... Respondents



H.C.P.(MD) No.1449 of 2023

WEB COPY

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 relating to the impugned detention order in H.S(M)Confdl.No.116/2023, dated 05.09.2023 passed by the second respondent and to set aside the same and consequently to direct the respondents that to produce the detenu namely Sharuk Raja (aged 28 years), S/o.Parish, who has been termed as "Drug Offender" and who is now detained in the Central Prison, Palayamkottai before this Court and to set the detenu at his liberty.

For Petitioner : Mr.M.S.Jeyakarthik

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., Sharuk Raja, son of Parish, aged about 28 years. The detenu has been detained by the second respondent by his order in H.S(M).Confdl.No.116/2023, dated 05.09.2023 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.



H.C.P.(MD) No.1449 of 2023

WEB COPY

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 grounds have been raised in the habeas corpus petition, learned counsel for the petitioner submitted that the Detaining Authority, while detaining the detenu, has relied on remand extension order, which is available at Page No.173 of the booklet, but the same has not been furnished to the detenu. It is, therefore, stated that the detenu is deprived of his valuable right to make an effective representation.

4. On a perusal of the Booklet, this Court finds that the translated copy of the remand extension order relied on by the Detaining Authority at Page No.173 of the booklet, has not been furnished to the detenu. Therefore, we are of the view that the non-furnishing of the said document would deprive the detenu of his valuable right to make an effective representation. It is in the said circumstances, this Court finds that the impugned detention order passed by the Detaining Authority is vitiated.



H.C.P.(MD) No.1449 of 2023

WEB COPY

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:

"6. The short question that falls for our consideration is whether failure to supply the Tamil version of the order of remand passed in English, a language not known to the detenue, would vitiate her further detention.

...

...

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



H.C.P.(MD) No.1449 of 2023

WEB COPY

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.

...

...

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 translated copy of the



H.C.P.(MD) No.1449 of 2023

WEB COPY

remand extension order relied on by the Detaining Authority at Page No.173 of the booklet, 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 H.S(M)Confdl.No.116/2023, dated 05.09.2023, passed by the second respondent is set aside. The detenu, viz., Sharuk Raja, aged about 28 years, son of Parish, 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.]

23.04.2024

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



H.C.P.(MD) No.1449 of 2023

WEB COPY

To:

- 1.The Additional Chief Secretary,
Home, Prohibition and Excise Department,
Secretariat,
Chennai-600 009.
- 2.The District Collector and District Magistrate,
Thoothukudi District,
Thoothukudi.
- 3.The Inspector of Police,
Tiruchendur Police Station,
Thoothukudi District.
- 4.The Superintendent of Central Prison,
Palayamkottai Central Prison,
Tirunelveli.
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



H.C.P.(MD) No.1449 of 2023

A.D.JAGADISH CHANDIRA, J.
AND
K.RAJASEKAR, J.
am

H.C.P.(MD) No.1449 of 2023

23.04.2024