



HCP(MD)No.1637 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 02.04.2024

CORAM

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

H.C.P.(MD)No.1637 of 2023

Lakshmi

.. Petitioner / Mother of Detenu

Vs.

1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai – 9.

2.The District Collector and District Magistrate,
Thoothukudi District,
Thoothukudi.

3.The Inspector of Police,
Murappanadu Police Station,
Thoothukudi District.

4.The Superintendent of Prison,
Palayamkottai Central Prison,
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 in relating to the impugned detention order in H.S.(M)Confdl.No.65/2023 dated 04.05.2023



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passed by the second respondent and to set aside the same and consequently to direct the respondents to produce the detenu Marimuthu, aged 31 years, S/o.Murugan, who was termed as “Goonda” 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.Jeya Karthik
For Respondents : Mr.A.Thiruvadikumar
Additional Public Prosecutor

ORDER

(Order of the Court was made by A.D.JAGADISH CHANDIRA,J.)

The petitioner is the mother of the detenu viz., Marimuthu, aged about 31 years, S/o.Murugan Thevar. The detenu has been detained by the second respondent by his order in H.S.(M) Confdl.No.65/2023 dated 04.05.2023 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 grounds have been raised in the Habeas Corpus Petition, the learned counsel appearing for the petitioner would mainly focus his argument on the ground that the translated copy of the documents relied upon by the Detaining Authority at Page Nos.245 and 247 of the booklet in vernacular language have 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. Mr.A.Thiruvadikumar, learned Additional Public Prosecutor, strongly opposed the Habeas Corpus Petition by filing his counter.

5. On perusal of the booklet, in particular, Page Nos.245 and 247, this Court finds that the translated copy of the documents relied upon by the Detaining Authority have not been furnished to the detenu. Therefore, we are of the view that the non-furnishing of the translated copy of the documents relied upon by the Detaining Authority in vernacular language would deprive the detenu of his valuable right to make an effective representation.



6. In this context, it is useful to refer to the judgment of the Hon'ble Supreme Court in the case of ***Powanammal Vs. State of Tamil Nadu*** reported in **(1999) 2 SCC 413**, wherein, the Hon'ble Supreme Court, after discussing the safeguards embodied in Article 22(5) of the Constitution, observed that the detenu should be afforded an opportunity of making 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 order reads as follows:

“6. The short question that falls for our consideration is whether failure to supply 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 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 non-supply 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.”

7. Thus, the detention order is vitiated on the ground of non-furnishing of the vital documents in the vernacular language and hence, the same is liable to be quashed.

8. In the result, the Habeas Corpus Petition is allowed and the order of detention in H.S.(M) Confdl.No.65/2023 dated 04.05.2023 passed by the



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second respondent is set aside. The detenu, viz., Marimuthu, S/o.Murugan Thevar, aged about 31 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.)
02.04.2024

NCC : Yes / No
Index : Yes / No
Lm

To

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- 2.The District Collector and District Magistrate,
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- 3.The Inspector of Police,
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- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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