IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 06.10.2015

CORAM:

THE HONOURABLE DR.JUSTICE S.TAMILVANAN
AND
THE HONOURABLE MR.JUSTICE C.T.SELVAM

H.C.P.No.1657/2015

Palani ...Petitioner

Vs

1. The Secretary to the Government,
   Home, Prohibition and Excise Department,
   Secretariat, Chennai-600 009.

2. District Collector & District Magistrate,
   Vellore District,
   Vellore-9. ...Respondents

Habeas Corpus Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Habeas Corpus to call for the records in connection with the order of detention passed by the second respondent dated 28.06.2015 in C3.D.O.No.60/2015 against the petitioner's son Babuji, male aged 25 years S/o.Palani, who is confined at Central Prison, Vellore and set aside the same and direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner : Mr.D.Balaji

For Respondents : Mr.V.M.R.Rajentren,
Additional Public Prosecutor

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ORDER

[Order of the Court was made by S.TAMILVANAN, J]

Challenge is made to the order of detention passed by the 2nd respondent vide Proceedings in C3.D.O.No.60/2015 dated 28.06.2015, whereby the son of the petitioner, by name Babuji, son of Palani, aged 25 years, was ordered to be detained under the provisions of Tamil Nadu Prevention of Dangerous

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Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982) branding him as a "BOOTLEGGER".

2.Though many grounds have been raised in the petition, Mr.D.Balaji, the learned counsel appearing for the petitioner, confines his argument only in respect of non-application of mind on the part of the detaining authority in passing the order of detention.

3.According to the learned counsel appearing for the petitioner, the petitioner is in remand in the ground case in Crime No.209/2015 registered by Ranipet Prohibition Enforcement Wing and the bail application filed by him in the said case before the learned Principal Sessions Court, Vellore in Crl.MP.No.2022/2015 was pending as on the date of the passing of the detention order. Further, the Detaining Authority has stated in the Arrest Memo at page 25 of the Booklet furnished to the detenu, that the arrest in respect of the above case, has been intimated to one Rekha, aged about 24 years, wife of the detenu over phone and an endorsement by the authorities has been made to that effect ; but the detaining authority has not furnished any materials to substantiate the fact of serving the Arrest Memo on the said Rekha or any other relatives of the detenu by Thapal or Registered Post. Therefore, it is stated that the detenu was deprived of making an effective representation in the absence of furnishing of full particulars by the Detaining Authority. Hence, it is stated that the Detaining Authority has passed the impugned detention order in total non-application of mind. In support of his contention, the learned counsel for the petitioner relied on the judgment reported in 2008 [3] MLJ [Crl.] 744 [AKILANDESWARI Vs. STATE REP.BY SECRETARY TO GOVERNMENT, HOME, PROHIBITION AND EXCISE DEPARTMENT, CHENNAI-9 AND ANOTHER].

4.Per contra, the learned Additional Public Prosecutor would submit that the order of detention has been passed on cogent and sufficient materials and the same cannot be interfered with at the instance of the petitioner. Therefore, he submits that the Habeas Corpus Petition does not merit any consideration and the same is liable to be dismissed.

5.We have heard the learned counsel for both sides with regard to the facts and citation.

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6.It is a case, among other grounds, where the learned counsel for the petitioner would urge that the arrest of the detenu in the ground case has not been intimated to the family members or the relatives or to the known persons of the detenu as per the procedure laid down. As evidenced from the document in page 25 of the Booklet furnished to us, a mere endorsement is made by the authorities to the effect that the arrest intimation has been informed to the wife of the detenu over cell phone bearing No.9843534289; but no materials have been furnished to substantiate that the said intimation was sent through a Thapal or Registered post or as per the procedure laid down. Therefore, non-furnishing of details given to the relatives of the detenu would amount to deprivation of the right of the detenu to make an effective representation and the same would vitiate the order of detention and the same cannot be sustained in the eye of law.

7. At this juncture, it is relevant to refer the judgment of this Court reported in 2008 [3] MLJ [Crl.] 744 [CITED SUPRA], the Division bench of this Court has held as follows:-

> "5.Though the learned Additional Public Prosecutor has made an attempt to justify by stating that the family members were intimated through telegrams, he has not any placed any material to satisfy this Court as to whether any telegram was sent and the same was acknowledged either by the family members or relatives of the detenu. A right of intimation to the relatives or family members of the detenu encompasses itself the fundamental right guaranteed under Article 22 [5] of the Constitution of India to make a representation to the detaining authority or the State Government, as the case may be. In the event the arrest is not intimated, the detenu would not be in a position to make any such representation and in that context, failure on the part of the detaining authority would amount to deprivation of the right of the detenu to make an effective representation guaranteed under Article 22[5] of the Constitution of India. On the facts of this case, a specific averment has been made that the intimation was not given. We also find that the said averment has not been controverted in the counter affidavit. Though the learned Additional Public Prosecutor submitted that the family members of the detenu were informed of the arrest through telegram, there are no materials placed before us to substantiate the said

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contention. Further, the copy of the telegram has also not been furnished to the detenu. In the absence of the same, we are unable to accept the contention of the learned Additional Public Prosecutor that the family members or the relatives of the detenu were informed of the arrest. Under these circumstances the detention order is vitiated."

8.It is a trite law that personal liberty protected under Article 21 is so sacrosanct and so high in the scale of Constitutional values that it is the obligation of the detaining authority to show that the impugned detention meticulously accords with the procedure established by law. Preventive detention is preventive and not punitive. When ordinary law of the land is sufficient to deal with, taking recourse to the preventive detention law is illegal.

9.In the light of the above facts and law, we have no hesitation in quashing the order of detention on the above sole ground.

10. Accordingly, the Habeas Corpus Petition is allowed and the impugned detention order passed by the 2nd respondent is set aside. The detenu is directed to be released forthwith unless his presence is required in connection with any other case.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to the Government,
   Home, Prohibition and Excise Department,
   Secretariat, Chennai-600 009.

2. District Collector & District Magistrate,
   Vellore District,
   Vellore-9.

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3. The Superintendent of Central Prison
   Vellore.

4. The Joint Secretary to Government,
   Public (Law & Order)
   Fort St. George, Chennai - 9.

5. The Public Prosecutor,
   High Court, Madras.

H.C.P.No.1657/2015

SKV (CO)
PSI (19.10.2015)

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