

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.01.2016

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THE HONOURABLE MR. JUSTICE R.SUDHAKAR

and

THE HONOURABLE MR. JUSTICE P.N.PRAKASH

H.C.P.No.1822/2015

Selvi

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Petitioner

Vs.

1.The Principal Secretary,
Government of Tamilnadu
Home, Prohibition & Excise [XVI] Department
Fort St George, Chennai 600 009.

2.The Commissioner of Police
Chennai City.

..

Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus calling for the records in Memo No.529/BCDFGISSSV/2015 dated 13.07.2015 on the file of the 2nd respondent herein and quash the same and direct the respondents herein to produce the body of the petitioner's husband Charles, aged 32 years, S/o.Selvaraj, now confined in Central Prison, Vellore before this Court and set him at liberty.

For Petitioner	:	M/s.R.Subhadra Devi
For Respondents	:	Mr.M.Maharaja,APP

ORDER

[Order of the Court was made by P.N.PRAKASH J.]

Challenge is made to the order of detention passed by the second respondent vide Proceedings in Memo No.529/BCDFGISSSV/2015 dated 13.07.2015, whereby the detenu/husband of the petitioner, by name, Charles, S/o.Selvaraj, aged 32 years, was ordered to be detained under the provisions of the Tamil Nadu Prevention of Dangerous 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 "Goonda".

2.Though many grounds have been raised in the petition, M/s.R.Subhadra Devi, the learned counsel appearing for the petitioner, confines her argument only in respect of non-application of mind on the part of the detaining authority in passing the order of detention.

3.Learned counsel appearing for the petitioner submitted that the arrest of a detenu should be informed to his relatives ; but in the instant case the arrest of the detenu has been informed to one Uma , W/o.Adhikesavan and the said Adhikesavan is one of the co-accused in the ground case. Further, the arrest intimation of the detenu has not been enclosed in the booklet and the arrest intimation of the another co-accused, viz., Vicky @ Vigneswaran has been

furnished. This furnishing of irrelevant document has deprived of the detenu in making effective representation and that it is indicative of non-application of mind on the part of the Detaining Authority and hence, prays for quashment of the detention order. In support of his contention, the learned counsel for the petitioner relied on the judgment reported in 2008 [3] MLJ [CrI.] 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.

6.It is a case, among other grounds, where the learned counsel for the petitioner would urge that the arrest of the detenu has not been intimated to the family members or the relatives or to the known persons of the detenu. As evidenced from the document in page 73 of the Booklet furnished to us, a mere

endorsement is made by the authorities to the effect that the arrest intimation has been given to one **"Uma, F/27, W/o.Adhikesavan, No.2/72, Anna Street, Kelithipettai, Chennai-69"**. But, the factum reveals that the said Uma is neither a relative nor a known person to the detenu and that she is the wife of the co-accused of the detenu in the ground case. It is further evidenced that the Arrest Memo of the detenu has not been annexed in the Booklet and the Arrest Memo of one Vicky @ Vigneswaran, the other co-accused in the ground case, has been furnished. Therefore, furnishing of irrelevant details and non-intimation of the arrest of the detenu to the family members or relatives or known persons, would amount to deprivation of the right of the detenu to make and 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 [CrI.] 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 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 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 mentioned ground.

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AND
P.N.PRAKASH, J.,

AP

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

(R.S.,J.) (P.N.P.,J.)
19.01.2016

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To

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- 2.The Commissioner of Police
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- 3.The Public Prosecutor,
High Court, Madras.

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