

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.06.2015

CORAM

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

H.C.P.No.323 of 2015

Divya

... Petitioner

Vs

1.The State of Tamil Nadu,
rep.by the Secretary to Government
Home, Prohibition & Excise Department
Secretariat, Chennai 600 009.

2.The Commissioner of Police,
Egmore, Chennai - 8.

... Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus to call for the entire records from the second respondent in connection with order Memo BDFGISSV/1738/2014 dated 07.11.2014 and quash the same and produce the petitioner's brother Venkatesh, S/o.Gajendran, aged about 26 years, now detained in Central Prison, Puzhal, Chennai - 66 under the Tamil Nadu Act 14 of 1982 before this Court and set him at liberty and quash the detention order.

For Petitioner : Mr.P.K.Ilavarasan

For Respondents : Mr.M.Maharaja,
Addl. Public Prosecutor

O R D E R

[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 Memo BDFGISSV/1738/2014 dated 07.11.2014, whereby the brother of the petitioner by name Venkatesh, son of Gajendran, aged 26 years, was ordered to be detained under the provisions of 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, Mr.P.K.Ilavarasan, 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 two adverse cases in Crime Nos.1705 and 1720 of 2014 and the ground case in Crime No.1724 of 2014 registered by G5 Secretariat Colony Police Station and the bail applications filed by him in the said cases before the learned Principal Sessions Court, Chennai in CrI.M.P.Nos.17120, 17119 and 17121 of 2014 were pending as on the date of the passing of the detention order. Further, the Detaining Authority has stated in the Arrest Memo at page Nos.39, 65 and 105 of the Booklet furnished to the detenu, that the arrest in respect of the above cases, has been intimated to one Mabasha 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 Mabasha 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 [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 and citation.

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 Nos.39, 65 and 105 of the Booklet, a mere endorsement is made by the authorities to the effect that the arrest intimation has been informed to the friend of the detenu over phone without mentioning the phone number; 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 [Cr1.] 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. In Shanmugam Vs. State of Tamil Nadu and Another (2014 Cri. L.J. 1223), this Court has held as under:

"15. Intimation of arrest should be communicated to the relatives or the friends of the person concerned through anyone of the legally recognized modes, which would ensure the right of the person arrested under preventive detention. If such intimation of arrest has not been made effectively, then, it would confer a right upon the arrestee to impugn the arrest effected on him and thereby, the detention order would get vitiated on that ground also. Here is a case, where the arrest of the detenus had been communicated

through cell phone to the wife and friend of the detenus, but, there is no proof to exhibit that the intimation of arrest was given to the family members of the detenus. On the failure of the same, the detention order would be vitiated on the ground of deprivation of right guaranteed under Article 22(1) of the Constitution of India."

9.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.

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

11. 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

//True Copy//

Sub Assistant Registrar

mmi

To

1.The Secretary to Government
Home, Prohibition & Excise Department
Secretariat, Chennai 600 009.

2.The Commissioner of Police, Egmore, Chennai - 8.

3.The Superintendent,
Central Prison, Puzhal, Chennai.

4.The Public Prosecutor, High Court, Madras.

5.The Joint Secretary to Government Public
(Law & order), Fort St. George, Chennai. 600 009.

H.C.P.No.323 of 2015

KSJ(CO)
EU 03.07.15