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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 28.10.2015

CORAM:

THE HONOURABLE MR.JUSTICE **S.NAGAMUTHU**
and

THE HONOURABLE MR.JUSTICE **V.S.RAVI**

H.C.P(MD)No.1083 of 2015

S.Muthu

.. Petitioner

Vs.

1.The Principal Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Fort St.George,
Chennai-600 009.

2.The Commissioner of Police,
Tirunelveli City,
Tirunelveli.

.. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Habeas Corpus, to call for the records relating to the impugned detention order No.46/BCDFGISSSV/2015, dated 14.05.2015, passed by the 2nd respondent and quash the same and consequently direct the respondents to set the petitioner's son/detenu, namely, Subbu Kutti, aged about 20 years, at liberty.

For Petitioner : Mr.A.R.Jeya Ruthran

For M/s.V.Angusamy

For Respondents : Mr.T.Mohan

Additional Public Prosecutor.

O R D E R

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

The petitioner is the father of the detenu Mr.Subbu Kutti, aged 20 years, who has been detained under the Tamil Nadu Act 14 of 1982, as per the order of the second respondent in Detention Order No.46/BCDFGISSSV/2015, dated 14.05.2015, branding him as a "Goonda". Challenging the same, the petitioner is before this Court with this Habeas Corpus Petition.

2. We have heard the learned counsel appearing for the petitioner and learned Additional Public Prosecutor appearing for the state.



3. Though several grounds have been raised in this petition, the learned counsel for the petitioner would mainly focus his arguments on the ground that there is violation of Article 22(5) of the Constitution of India and under Section 8(1) of Tamilnadu Act 14 of 1982. According to the learned counsel for the petitioner, the detention order was made on 14.05.2015, but the booklet containing the materials considered by the Detaining Authority to arrive at a subjective satisfaction, were served on the detenu only on 20.05.2015 and not within five days from the date of detention. Thus, according to the learned counsel for the petitioner, there is violation of Section 8(1) of the Tamilnadu Act 14 of 1982 and Article 22(5) of the Constitution of India.

4. The learned Additional Public Prosecutor would submit that in this case, as soon as the detenu was detained under the detention order, the grounds of detention were furnished to him on 14.05.2015 itself, in which, the booklet containing the materials of the Detaining Authority were not furnished to him. It was furnished on 20.05.2015. Thus, according to the learned Additional Public Prosecutor, there is no violation of Section 8 (1) of the Tamilnadu Act 14 of 1982 as well as Article 22(5) of the Constitution of India.

5. We have considered the above submissions.

6. At the outset, it needs to be mentioned that preventive detention, being a detention without a proper trial and proof of any offence, the provision should be construed very strictly. The right to have earliest opportunity of making representation against the detention order has been guaranteed as a fundamental right under Article 22 (5) of the Constitution of India. The said provision reads as follows:

"Article 22. (5). When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order."

7. Section 8(1) of the Tamilnadu Act 14 of 1982 reads as follows:

"8. Grounds of order of detention to be disclosed to persons affected by the order. (1).

When a person is detained in pursuance of a detention order, the authority making the order as soon as may be, but not later than five days from the date of detention, communicate to him the grounds on which the



order has been made and shall afford him the earliest opportunity of making a representation against the order to the State Government."

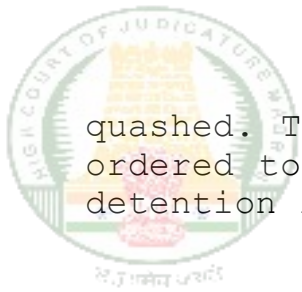
8. A plain reading of these provisions would go to show that it is not only enough to communicate to the detenu the grounds on which, the order has been made but also he shall be afforded the earliest opportunity of making a representation against the order. It is only in compliance with these provisions, the booklet containing the materials, which have been considered by the Detaining Authority to arrive at a subjective satisfaction to pass the detention order, are furnished. In the absence of the service of these papers, the detenu cannot have an opportunity to effectively make a representation.

9. In this case, though the detention order was made on 14.05.2015, the booklet containing the materials were served to the detenu only on 20.05.2015, which, in our considered view, is in violation of Article 22(5) of the Constitution of India and similarly Section 8(1) of the Tamilnadu Act 14 of 1982. Such view has been taken in an earlier order passed by yet another Division Bench of this Court in **Malleeswari -vs- State Government and another** reported in **(2011) 1 MLJ (Cr1) 513**, wherein the Division Bench has held in paragraph No.7 as follows:

"It is not in controversy that the order of detention came to be set aside on the grounds recorded above. As rightly pointed out by the learned counsel for the petitioner, though the impugned detention order came to be passed on 02.03.2010, a copy of the same and the grounds of detention and connected papers were supplied to the detenu only on 09.03.2010. From a reading of the detention order and grounds, it is quite clear that the copies of the adverse cases and the ground case, were to be supplied to the detenu not exceeding five days from the date of the order of detention. In the present case on hand, though the impugned detention order was passed on 02.03.2010, it was supplied to him only on 09.03.2010, which is violative of the mandatory provision."

In view of the above, in this case, the detention order is liable to be set aside.

10. In the result, this Habeas Corpus Petition is allowed and the impugned Detention Order, passed by the second respondent, in his proceedings in No.46/BCDFGISSSV/2015, dated 14.05.2015, is



quashed. The detenu, namely, Subbu Kutti, aged about 20 years, is ordered to be set at liberty forthwith, if he is not required for detention in connection with any other case.

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/True copy/

Sd/-
Assistant Registrar(T&P)

Sub Assistant Registrar

PJL

To

1.The Principal Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Fort St.George,
Chennai-600 009.

2.The Commissioner of Police,
Tirunelveli City,
Tirunelveli.

3.The Superintendent,
Borstal School,
Pudukkottai.(In duplicate to communicate for detenu)

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

5. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.V.Angusamy, Advocate Sr No.63051

ORDER MADE IN
H.C.P (MD) No.1083 of 2015
28.10.2015

RG/GSV-PM/SAR-II 03.11.2015 4P/8C.