

In the High Court of Judicature at Madras

Date: 24.5.2016

Coram :

The Hon'ble Mr. Justice G. CHOCKALINGAM
and
The Hon'ble Mr. Justice M.V.MURALIDARAN

H.C.P.No.588 of 2016

Viswanathan

... Petitioner

-vs-

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

2. The District Collector-cum-District Magistrate,
Vellore District, Vellore-632 009. Respondents

Prayer: Petition under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus to call for the entire records pertaining to the order of detention passed by the 2nd respondent herein dated 14.03.2016 made in C3/D.O.No.18/2016 against the detenu Thiru. Nagendran, Male aged 43 years, S/o.Venkatesan, who is now confined in 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.T.Vijayaraghavan

For Respondents- Mr.M.Maharaja
Addl. Public Prosecutor

O R D E R

(Order of the Court was made
by G. Chockalingam, J.)

The petitioner is the son of the detenu. The detenue has been branded as a "Boot legger" under Section 2(b) of the Tamil Nadu Act 14 of 1982.

2. Amidst several grounds raised by the learned counsel for the petitioner to attack the impugned order of detention, he mainly focussed his argument that the detaining authority failed to ask clarification from the sponsoring authority about non serving of arrest memo in a proper manner to the family members, relatives or friends of the detenu and there was no proof to show that the intimation of arrest was given, as the arrest was

communicated through cell phone, which clearly shows non-application of mind on the part of detaining authority.

3. Per contra, Mr.M.Maharaja, learned Additional Public Prosecutor submits that acts committed by the detenu are prejudicial to the maintenance of public order and peace and the arrest was communicated by way of cell phone, which is an effective and speedy way of communication available with the authorities and therefore, there is no illegality in making such intimation.

4. We have considered the rival submissions and perused the materials available on record.

5. A close reading of the arrest memo, which is annexed at page No.54 of the booklet shows that the arrest of detenu was intimated over phone No.9468268355. But at the same time, it is to be remembered that in order to meet fairness, justness and reasonableness, after a person is taken in custody in pursuance of an order of detention, the members of his household, preferably the parent, the child or the spouse, must be informed in writing of the passing of the order of detention and of the fact that the detenu has been taken in custody, by duly intimating as to the place of detention, including the place where the detenu is transferred from time to time, 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. In the case on hand, detaining authority has stated that the arrest of the detenu had been communicated through cell phone, but, there is no proof to exhibit such intimation of arrest to the family members of the detenu. Thus, 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.

6. The Hon'ble Division Bench of this Court in the case of Shanmugam and another vs. State of Tamil Nadu and another, reported in (2013) 4 MLJ (Cr1) 1, while issuing some suggestions and guidelines to the Government of Tamil Nadu in this regard, set aside the order of detention, by observing as under:

"19. Despite clear instructions given by the Government after touching upon the legal position, the officer, who arrested the detenus informed the said arrest to the wife and friend of detenus over cellphone, by simply stating that the date of arrest being Sunday, no telegraphic service was available, which is a matter of ignorance on the part of arresting authorities, as in our country, telegraphic services are available even on Sundays. The mode of communication adopted by the authorities, which was not even looked into by the detaining authorities is not only unknown to the settled principles, but also

is an attempt to cast aside the instructions given by the Government."

7. 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/-
Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

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To

1. The Secretary to Government,
(Home) Prohibition and Excise Department,
Secretariat, Fort St.George, Chennai - 600 009.
2. The District Collector-cum-District Magistrate,
Vellore District, Vellore-632 009.
3. The Superintendent,
Central Prison,
Vellore
4. The Joint Secretary to Government
Public (Law and order)
Fort St. George, Chennai-9
5. The Public Prosecutor
High Court, Madras.

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