



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.05.2017

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

and

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

H.C.P. (MD) No.103 of 2017

Sathanantham

... Petitioner

-vs-

1.The Principal Secretary to Govt.,
State of Tamil Nadu,
Home, Prohibition & Excise Department,
Fort St.George, Chennai-600 009.

2.The District Magistrate and District Collector,
Office of the District Collector and District Magistrate,
Tirunelveli District.

3.The Superintendent of Prison,
Palayamkottai Central Prison,
Tirunelveli District.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Habeas Corpus, calling for the entire records, connected with the detention order of the Respondent No.2 in M.H.S.Confdl No.03/2017 dated 12.01.2017 and quash the same and direct the respondents to produce the body or person of the detenu by name Sathanantham, S/o.Jeganatha Thevar, aged about 65 years, now detained at Palayamkottai Central Prison before this Court and set him at liberty forthwith.

For Petitioner : Mr.R.Alagumani

For Respondents : Mr.C.Ramesh

Addl. Public Prosecutor

O R D E R

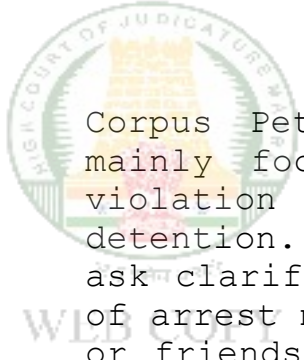
[Order of the Court was made by M.V.MURALIDARAN, J.]

The petitioner is the detenu himself. The detenu has been detained by the 2nd respondent by order in M.H.S.Confdl No.03/2017 dated 12.01.2017, holding the detenu to be a "Goonda", as contemplated under Section 2(f) of Tamil Nadu Act 14 of 1982. The said order is under challenge in this Habeas Corpus Petition.

2.We have heard the learned counsel for the petitioner and the learned Additional Public Prosecutor for the respondents. We have also perused the records produced by the Detaining Authority.

<https://hcservices.ecourts.gov.in/hcservices/>

3.Though several grounds have been raised in the Habeas



Corpus Petition, the learned counsel for the petitioner would mainly focus his argument on the ground that there is gross violation of procedural safeguards, which would vitiate the detention. He would submit 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 to the wife of the detenu.

4. The learned Additional Public Prosecutor opposed the Habeas Corpus Petition. He would submit 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 to the wife of detenu, which is an effective and speedy way of communication available with the authorities and therefore, there is no illegality in making such intimation.

5. It is the contention of the petitioner that there was a procedural irregularity in intimating the arrest of detenu and therefore, the detention order is liable to be quashed.

6. In **Shanmugam vs. State of Tamil Nadu**, [2014 (1) MWN (Cr.) 341 (DB)], the Hon'ble Division Bench of this Court, by referring to the judgment of the Hon'ble Supreme Court in **D.K. Basu vs. State of W.B.**, [1997 (1) SCC 416] and other legal provisions of law, has held as follows:

"15. Intimation of arrest should be communicated to the relatives or the friends of the person concerned through anyone of the legally recognised 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.

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. In the subject case, it has been mentioned in the arrest memo that the intimation of arrest was given to the wife of the detenu by way of cell phone, which would definitely deprive the right of the person arrested under preventive detention and therefore, the impugned detention order has no legs to stand.

8. In the result, the Detention Order, passed by the second respondent in M.H.S.Confdl No.03/2017 dated 12.01.2017 is quashed. The detenu, namely, Sathanantham, S/o.Jeganatha Thevar is ordered to be set at liberty forthwith, if he is not required for detention in connection with any other case.

9. In the upshot, we allow the Habeas Corpus Petition.

Sd/-

Assistant Registrar(Crl. Side)

/True Copy/

Sub Assistant Registrar

To:

- 1.The Principal Secretary to Govt.,
State of Tamil Nadu,
Home, Prohibition & Excise Department,
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- 2.The District Magistrate and District Collector,
Office of the District Collector and District Magistrate,
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- 3.The Superintendent of Prison,
Palayamkottai Central Prison,
Tirunelveli District.
- 4.The Joint Secretary to Government,
Public (Law & Order) Department,
Fort St.George, Chennai.
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

ar/er

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JS/KP/SAR.2/2.06.2017/3P-6C

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