



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.04.2018

CORAM:

WEB COPY

THE HONOURABLE Mr. JUSTICE C.T.SELVAM
and
THE HONOURABLE Mr. JUSTICE A.M.BASHEER AHAMED

H.C.P.(MD)No.342 of 2018

Raja

... Petitioner

Vs.

1.State of Tamil Nadu,
Rep. by the Principal Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George,
Chennai - 600 009.

2.The District Collector and District Magistrate,
Tirunelveli District,
Tirunelveli.

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

... Respondents

PRAYER: The 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 passed in M.H.S.Confdl. No.11/2018 dated 27.02.2018 on the file of the 2nd respondent herein and quash the same and direct the respondents to produce the detenu or body of the detenu namely Raja, aged about 31 years, S/o. Chellappa Thevar, now detained at Central Prison, Palayamkottai, before this Hon'ble Court and set him at liberty forthwith.

For Petitioner : Mr.N.Pragalathan

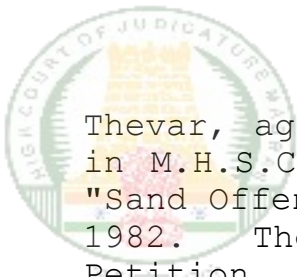
For Respondents : Mr.V.Neelakandan
Additional Public Prosecutor.

ORDER

(Order of the Court was made by C.T.SELVAM,J.)

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

The petitioner is the detenu viz., Raja, Son of Chellappa



Thevar, aged about 31 years. The detenu has been detained by order in M.H.S.Confdl. No.11/2018, dated 27.02.2018, holding him to be a "Sand Offender", as contemplated under 2(gg) of Tamil Nadu Act 14 of 1982. The said order is under challenge in this Habeas Corpus Petition.

WEB COPY

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

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. The learned counsel, by placing authorities, submitted that the arrest of the detenu in the ground case has been intimated by S.M.S. However, no proof of having done so has been produced.

4. Learned Additional Public Prosecutor opposed the Habeas Corpus Petition. He would submit that though the arrest of detenu has been intimated through S.M.S., on that score alone, the impugned detention order cannot be quashed. According to the learned Additional Public Prosecutor, no prejudice has been caused to the detenu and thus, there is no violation of the fundamental rights guaranteed under Articles 21 and 22 of the Constitution of India.

5. 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. It is seen that arrest of accused has been intimated through S.M.S. Such Act offences the decision of this Court in H.C.P.No.1897 of 2015 dated 21.09.2015 in the matter of Murugeswari v. The State of Tamil Nadu, rep. by its Secretary to Government, Home, Prohibition & Excise Department and others. Therefore, the respondents have failed to satisfy this Court on due compliance of Section 50(2) of Cr.P.C., which violates the dictum of Hon'ble Apex Court in D.K.Basu Vs. State of West Bengal reported in AIR (1997) SC 610.

6. In view of the above decision rendered by the Division Bench of this Court in H.C.P.(MD) No.1897 of 2015 and the decision of the Hon'ble Apex Court in D.K.Basu's case, this Court is of the view that the detention order is unsustainable in law on the ground of intimation of arrest of arrest not made effectively, and therefore the right conferred upon detenu to impugne the arrest effected on him is affected. Hence, the detention order is liable to be set aside.

7. In the result, the Detention Order, passed by the second respondent, in his proceedings in M.H.S.Confdl. No.11/2018, dated 27.02.2018, is quashed. The detenu, namely, Raja, son of Chellappa



Thevar, is ordered to be set at liberty forthwith, if his detention is not required in connection with any other case.

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

WEB COPY

/True Copy/

Sd/-
Assistant Registrar

Sub Assistant Registrar

To

- 1.The Principal Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George,
Chennai - 600 009.
- 2.The District Collector and District Magistrate,
Tirunelveli District,
Tirunelveli.
- 3.The Superintendent,
Central Prison,
Palayamkottai,
Tirunelveli District.
- 4.The Joint Secretary to Government, Public (Law & Order)
Fort St.George,
Chennai - 9.
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

SJ

DS/KKR/SAR-2 :14.06.2018: 3P/6C

H.C.P. (MD) No.342 of 2018
26.04.2018