



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.08.2018

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE C.T.SELVAM
AND
THE HONOURABLE MR.JUSTICE A.M.BASHEER AHAMED

H.C.P.[MD].No.938 of 2018

Kallavandan

: Petitioner

Vs.

1. State of Tamil Nadu,
Represented by the Principal Secretary to Government,
Home, Prohibition and Excise Department,
Fort. St. George, Chennai 600 009.
2. The District Collector and District Magistrate,
Thoothukudi District, Thoothukudi.
3. The Superintendent of Prison,
Central Prison, Palayamkottai,
Tirunelveli.

: Respondents

PRAYER: Petition is filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus, to call for the entire records connected with the detention order of the respondent No.2 in H.S.(M) Confdl No.18/18, dated 19.06.2018 and quash the same and direct the respondents to produce the body or person of the detenu by name Kallavandan, S/o.Appavoo Thevar, aged about 32 years, now confining at Palayamkottai Central Prison, before this Court and set him at liberty forthwith.

For Petitioner	: Mr.N.Pragalathan
For Respondents	: Mr.V.Neelakandan
	Additional Public Prosecutor

O R D E R

[Order of the Court was made by C.T.SELVAM, J.]

The petitioner is the detenu - Kallavandan, S/o.Appavoo Thevar, aged about 32 years. The detenu has been detained by the second respondent by his Detention Order in H.S.(M) Confdl No.18/18, dated 19.06.2018, holding him 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, the learned Additional Public Prosecutor appearing for the 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. We have considered the above submissions made by the learned counsel on either side and perused the materials placed before us.

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. It is seen that arrest of accused has been intimated through S.M.S. Such Act offends 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**.

7. 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 not made effectively and therefore, the right conferred upon detenu to impugn the arrest effected on him is affected. Hence, the detention order is liable to be set aside.

8. In the result, the Detention Order, passed by the second respondent, in his proceedings in Detention Order in H.S.(M) Confdl No.18/18, dated 19.06.2018, is quashed. The detenu, namely, Kallavandan, S/o.Appavoo Thevar, is ordered to be set at liberty

