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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.08.2018

CORAM:

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

H.C.P.[MD].No.955 of 2018

Palanimuthu @ Palani

: Petitioner

Vs.

1. State of Tamil Nadu, rep by
The Principal Secretary to Government,
Home, Prohibition and Excise Department,
Fort.St.George, Secretariat, Chennai 600 009.
2. The District Magistrate and District Collector,
Office of the District Magistrate and District Collector,
Pudukkottai District, Pudukkottai.
3. The Superintendent,
Central Prison,
Tiruchirappalli.

: Respondents

PRAYER: Petition is filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus, calling for the entire records in detention order passed in P.D.O.No.09/2018, dated 21.06.2018, on the file of the second respondent herein and set aside the same as illegal and direct the respondents to produce the petitioner, namely, Palanimuthu @ Palani, S/o.Kuppusamy, male, aged 51 years, who is detained in Central Prison, Tiruchirappalli, before this Court and set him at liberty.

For Petitioner	: Mr.K.A.S.Prabhu
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 - Palanimuthu @ Palani, S/o.Kuppusamy, male, aged 51 years. The detenu has been detained by the second respondent by his Detention Order in P.D.O.No.09/2018, dated 21.06.2018, holding him to be a "Boot-Legger", as contemplated under Section 2(b) 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 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 P.D.O.No.09/2018, dated 21.06.2018, is quashed. The detenu, namely, Palanimuthu @ Palani, S/o.Kuppusamy, male, aged 51 years, is ordered



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

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

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Sd/-
Assistant Registrar

/True Copy/

Sub Assistant Registrar (CS-II)

To

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

NB

TE/RSK/SAR-2 : 24/09/2018 : 3P/6C

ORDER MADE IN
H.C.P.[MD].No.955 of 2018
03.08.2018