



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.10.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH

and

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

H.C.P. (MD) No.1109 of 2018

Shahul Hameed

...Petitioner

Vs.

1.State of Tamil Nadu, rep. by
The Principal Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George,
Chennai - 9.

2.The Commissioner of Police,
O/o.The Commissioner of Police,
Tiruchirappalli City,
Tiruchirappalli.

3.The Superintendent,
Central Prison,
Tiruchirappalli.

...Respondents

PRAYER: Petition 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 C.No.35/Detention/C.P.O./T.C./2018, dated 24.07.2018 on the file of the second respondent herein and set aside the same as illegal and direct the respondents to produce the petitioner namely Shahul Hameed, S/o.Noor Mohammed, male, aged 44 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.K.Dinesh Babu,

Additional Public Prosecutor

ORDER

(Order of the Court was made by M.M.SUNDRESH, J.)

Petitioner is the detenu - Shahul Hameed, S/o.Noor Mohammed, aged about 44 years. Detenu has been detained by the second respondent by his order in C.No.35/Detention/C.P.O./T.C./2018, dated 24.07.2018, holding him to be a "Sand Offender", as contemplated under Section 2(gg) of the Tamil Nadu Act 14 of 1982. The said order is under challenge



in this Habeas Corpus Petition.

2. Despite three adjournments, no counter-affidavit is filed by the learned Additional Public Prosecutor.

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

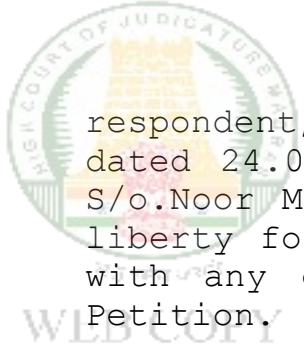
4. Though several grounds have been raised in the Habeas Corpus Petition, the learned counsel for petitioner would mainly focus on the ground that there is gross violation of procedural safeguards, which would vitiate the detention. Learned counsel, by placing authorities, submitted that the arrest of the detenu in the ground case has been intimated by S.M.S. and that the fact of intimation of arrest of the detenu to his family members finds no support in the booklet produced.

5. 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 the 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.

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 vitiates 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 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 the detenu to impugne the arrest effected on him is affected. Hence, the detention order is liable to set aside.

8. In the result, the Detention Order passed by the second



respondent, in his proceedings in C.No.35/Detention/C.P.O./T.C./2018, dated 24.07.2018, is quashed. The detenu, namely, Shahul Hameed, S/o.Noor Mohammed, aged about 44 years, is ordered to be set at liberty forthwith, if his detention is not required in connection with any other case. Accordingly, we allow the Habeas Corpus Petition.

Sd/-

Assistant Registrar (CO)

// True Copy //

Sub Assistant Registrar (CS-IV)

To

- 1.The Principal Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise Department,
Fort St.George,
Chennai - 9.
- 2.The Commissioner of Police,
O/o.The Commissioner of Police,
Tiruchirappalli City,
Tiruchirappalli.
- 3.The Superintendent,
Central Prison,
Tiruchirappalli.
- 4.The Director General of Police,
Egmore, Chennai.
- 5.The Joint Secretary to Government,
Public (Law & Order), Fort St.George, Chennai-9.
- 6.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

SML

BU/NM/SV/SAR-IV :13.11.2018 : 3P/7C

Order made in
H.C.P. (MD) No.1109 of 2018
Dated: 09.10.2018