

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.10.2019

CORAM

THE HON'BLE MR.JUSTICE M.M.SUNDRESH
AND
THE HON'BLE MR.JUSTICE RMT.TEEKAA RAMAN

H.C.P.NO.1711 OF 2019

Monika

... Petitioner

-vs-

1. The Secretary to the Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai - 600 009.

2. The Commissioner of Police,
Greater Chennai,
Chennai.

... Respondents

Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus calling for the records in connection with the order of detention passed by the second respondent dated 23.07.2019 in Memo No.BCDFGISSSV Lr.422/2019 against husband of the petitioner Mohammed Rafiq, M/A 26, son of Ashen Basha, who is confined at Central Prison, Puzhal, Chennai and set aside the same and consequently direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner : Mr.A.Saranraj

For Respondents : Mr.R.Prathap Kumar
Addl. Public Prosecutor

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ORDER

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

The petitioner is the wife of the detenu Mohammed Rafiq, son of Ashen Basha, male, aged about 26 years. The detenu has been detained by the second respondent by his order in BCDFGISSSV No.422/2019 dated 23.07.2019, holding 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 appearing 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 many grounds have been raised in the petition, learned counsel appearing for the petitioner, confines his argument only in respect of non-application of mind on the part of the detaining authority in passing the order of detention. According to the learned counsel appearing for the petitioner, the sponsoring authority has stated in the Arrest Memo at Page No.198 of the Booklet furnished to the detenu, that the arrest of the detenu has been intimated to the family member of the detenu. However, there is no material to substantiate the service of arrest intimation stated to have been made to the family member of the detenu. Therefore, it is stated that the detenu was deprived of making an effective representation in the absence of furnishing of full particulars by the detaining authority. Hence, it is stated that the Detaining Authority has passed the impugned detention order in total non-application of mind.

4. Per contra, the learned Additional Public Prosecutor would submit that the arrest of the detenu has been intimated to the family member of the detenu through SMS. However we find that there are no material particulars to substantiate the same. This Court has also taken the similar view in such cases that the detention order cannot be sustained.

5. As evidenced from the document in Page No.198 of the Booklet furnished to us, a mere endorsement is made by the authorities to the effect that the arrest intimation has been informed to the family member of the detenu through SMS but no materials have been furnished to substantiate that the said intimation was sent through Thapal or Registered post or as per the procedure laid down. Therefore, non-furnishing of details given to the relatives of the detenu would amount to deprivation of the right of the detenu to make an effective representation and the same would vitiate the order of detention and the same cannot be sustained in the eye of law.

6. It is a trite law that personal liberty protected under Article 21 is so sacrosanct and so high in the scale of Constitutional values that it is the obligation of the detaining authority to show that the impugned detention meticulously accords with the procedure established by law. Preventive detention is preventive and not punitive. When ordinary law of

the land is sufficient to deal with, taking recourse to the preventive detention law is illegal. The impugned detention order is therefore liable to be quashed.

7. In the result, the Habeas Corpus Petition is allowed and the order of detention in BCDFGISSSV No.422/2019 dated 23.07.2019, passed by the second respondent is set aside. The detenu, namely, Mohammed Rafiq, son of Ashen Basha, male, aged about 26 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

mmi/ssm

To

1. The Secretary to the Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai - 600 009.
2. The Commissioner of Police,
Greater Chennai,
Chennai.
3. The Superintendent,
Central Prison, Puzhal, Chennai.
4. The Public Prosecutor,
High Court, Madras.
5. The Joint Secretary to Government,
Public (Law & Order),
Fort St. George, Chennai.

H.C.P.No.1711 of 2019

BR(CO)
CS/03/12/2019