

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.06.2019

Coram

The Hon'ble Mr. Justice M.M.SUNDRESH
and
The Hon'ble Mr. Justice M.NIRMAL KUMAR

H.C.P.No.3021 of 2018

Rajeshwari

... Petitioner

Vs

1. The State of Tamil Nadu,
Rep.by its Secretary to Government,
Department of Prohibition and Excise (Home),
Fort St. George, Chennai - 9.
2. The District Collector and District
Magistrate, Kancheepuram District,
Kancheepuram. ... Respondents

Petition filed under Article 226 of the Constitution of India praying for a writ of habeas corpus, to call for the records in BCDFGISSSV No.98/2018 dated 12.12.2018 on the file of second respondent herein and set aside the same as illegal and produce the detainee Anjalai, wife of Jaganathan, aged about 49 years, who is confined at Special Prison for Women, Puzhal, Chennai - 66 before this Court and set him at liberty.

For Petitioner .. Mr.Ilayaraja Kandasamy

For Respondents.. Mr.C.Iyyappa Raj,
Addl. Public Prosecutor

ORDER

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

The petitioner is the daughter of the detainee Anjalai, wife of Jaganathan, aged about 49 years. The detainee has been detained by the second respondent by his order in BCDFGISSSV No.98/2018 dated 12.12.2018, holding her to be a "BOOTLEGGER", 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 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.83 of the Booklet furnished to the detainee, that the arrest of the detainee has been intimated to the family member viz., brother of the detainee. However, there is no material to substantiate the service of arrest intimation stated to have been made to the brother of the detainee. Therefore, it is stated that the detainee 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 detainee has been intimated to the brother of the detainee 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 83 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 brother of the detainee 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 detainee would amount to deprivation of the right of the detainee 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.98/2018 dated 12.12.2018, passed by the second respondent is set aside. The detinue, namely, Anjalai, wife of Jaganathan, aged about 49 years, is directed to be released forthwith unless her detention is required in connection with any other case.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to Government,
Department of Prohibition and Excise(Home),
Fort St. George, Chennai - 9.
2. The District Collector and District
Magistrate, Kancheepuram District,
Kancheepuram.
3. The Superintendent,
Special Prison for Women, Puzhal, Chennai.
4. The Joint Secretary to Government,
Public(Law & Order),
Fort Saint George, Chennai - 9.
5. The Public Prosecutor,
High Court, Madras.

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srg 12/07/2019