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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 07.06.2019

CORAM:

THE HONOURABLE MR. JUSTICE M. SATHYANARAYANAN
and
THE HONOURABLE MR. JUSTICE B. PUGALENDHI

H.C.P. (MD) No. 4 of 2019

Sudalaikannu

... Petitioner

Vs.

1. State of Tamil Nadu, rep, by
The Principal Secretary to Government,
Home, Prohibition and Excise Department,
Fort. St. George, Chennai-600 009.

2. The District Collector and
District Magistrate,
Tirunelveli District,
Tirunelveli.

3. The Superintendent of Prison,
Central Prison,
Palayamkottai,
Tirunelveli.

... Respondents

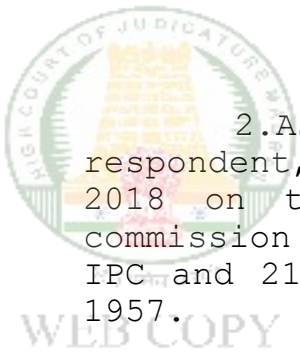
PRAYER:- Habeas Corpus Petition is filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus to call for entire records connected with the detention order passed in MHS Confdl No.152 of 2018 dated 24.12.2018 on the file of the second respondent herein and quash the same and direct the respondents to produce the detenu or body of the detenu namely Sudalaikannu, aged about 40 years, S/o. Sudalaikannu alias Valsudalaikannu, now detained at Central Prison, Palayamkottai, before this Court and set him at liberty forthwith.

For Petitioner	: Mr. N. Pragalathan
For Respondents	: Mr. K. Dinesh Babu Additional Public Prosecutor

ORDER

(Order of the Court was made by **B. PUGALENDHI, J**)

The petitioner himself is the detenu and challenge is made to the order of detention dated 24.12.2018 passed by the second respondent, under which, the detenu has been branded as "Sand Offender" and detained under the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Cyber Law Offenders, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Sexual Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982).



2.As per the grounds of detention passed by the second respondent, the detenu came to the adverse notice in Crime No.139 of 2018 on the file of the Monntradaippu Police Station for the commission of offence punishable under Sections 353, 506(ii) and 379 IPC and 21(1) Mines and Minerals (Development and Regulation) Act, 1957.

3.The grounds of detention further read that on 09.12.2018 at 09.30 hours, the Police party were conducting patrol duty and near Nanguneri IOB Corner, the detenu was driving the tipper lorry bearing registration number TN 75 H7268 and while the Police party stopped the tipper lorry, the detenu did not stop the tipper lorry and attempted to runover the police party with the said tipper lorry and ran away from the scene of occurrence and the police party found one unit river sand in the tipper lorry and seized the same under the cover of mahazar in the presence of the witnesses and a complaint in Crime No.356 of 2018 under Section 353, 307 and 379 IPC and 21(1)(iv) of Mines and Minerals (Development and Regulation) Act, 1957 was registered against the detenu. The detenu was arrested on 09.12.2018 and was produced before the learned Judicial Magistrate, Nanguneri and was remanded to judicial custody till 03.01.2019.

4.The detaining authority being satisfied with the materials placed by the sponsoring authority that the activities of the detenu are prejudicial to the maintenance of public order, clamped the order of detention and challenging the same, the petitioner has come forward to file this Habeas Corpus Petition.

5.The learned Counsel for the petitioner would submit that in connection with the ground case, the detenu was arrested on 09.12.2018 and the arrest intimation was given to his wife, namely, Indira through SMS to her Mobile No.9047921388, but, for having sent the arrest intimation to the wife of the detenu through SMS, no material whatsoever has been produced and it is obligatory on the part of the detaining authority to furnish the text of the SMS. He further submitted that the seizure mahazar, which is said to have been prepared at 10.00 am on 09.12.2018, contains the FIR number, but the fact remains that the First Information Report came to be registered only at 10.30 am on 09.12.2018 and in connection with the said discrepancy, the detaining authority has not sought any clarification from the sponsoring authority. In view of the above discrepancies, the impugned order of detention is vitiated and prays for quashment of the same.

6.Per contra the learned Additional Public Prosecutor by drawing attention of this Court to the counter affidavit filed by the second respondent would submit that the detention order is passed on proper application of mind to the entire materials and prays for dismissal of this petition.



7.This Court has carefully considered the rival submissions on either side and perused the materials placed on records.

8. A perusal of page No.93 of the booklet would disclose that the arrest intimation of the detenu in connection with the ground case was sent to the wife of the detenu through SMS to her mobile number. Neither the receipt of the SMS was acknowledged by the wife of the detenu nor the contents of the SMS were disclosed in the arrest intimation form. In the absence of such vital materials, it cannot be stated that arrest intimation was given to the wife of the detenu, which is one of the basic principles to be complied with as per the decision of the Honourable Supreme Court in **D.K.Basu Vs. State of West Bengal** reported in **AIR (1997) SC 610**. that apart, as rightly pointed out by the learned Counsel for the petitioner, there is a discrepancy in the preparation of seizure mahazar and registration of First Information Report in the ground case. The crime number is mentioned in the seizure mahazar even before the registration of the case and there is no explanation offered in this regard. Hence, on these grounds, the impugned order is liable to be quashed.

9.In the result, this Habeas Corpus Petition is allowed and the impugned order of detention in M.H.S.Confdl No.152 of 2018 dated 24.12.2018, passed by the second respondent is quashed. The detenu, Sudailaikannu, son of Sudalaikannu alias Valsudalaikannu, is directed to be set at liberty forthwith, unless his detention / remand is required in connection with any other case / proceedings.

Sd/-

Assistant Registrar (C.O)

// True Copy //

Sub Assistant Registrar(CS)

To

1.The Principal Secretary to Government,
Home, Prohibition and Excise Department,
Fort.St.George, Chennai-600 009.

2.The District Collector and
District Magistrate,
Tirunelveli District,
Tirunelveli.

3.The Superintendent of Prison,
Central Prison,
<https://hcservices.ecourts.gov.in/hcservices/>
Palayankottai,
Tirunelveli.



4.The Joint Secretary to Government,
Public (Law and Order),
Fort Saint George,
Chennai -09.

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5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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