



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **04.10.2019**

CORAM:

**THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
AND**

THE HONOURABLE MR.N.ANAND VENKATESHI

HCP. (MD) .No.346 of 2019

Siva

... Petitioner

Vs.

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

2.The District Collector and The District Magistrate,
O/O. The District Collector and District Magistrate,
Nagapattinam District,
Nagapattinam.

3.The Superintendent,
Central Prison,
Tiruchirappalli

... Respondents

PRAYER: This 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 C.O.C.No.18/2019 dated 05.04.2019 on the file of the 2nd respondent herein and set aside the same as illegal and direct the respondents to produce the petitioner namely Siva, S/o.Ramesh, male, aged 24 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
Addl.Public Prosecutor

O R D E R

The petitioner is the detenu, who, vide impugned Order of Detention, dated 05.04.2019, passed by the 2nd respondent by invoking Section 3(2) of the Tamil Nadu Act 14 of 1982, in branding the detenu as 'Goonda', came forward to file this Habeas Corpus petition.



2. The Sponsoring Authority has recommended for the detention of the Petitioner, under Act 14 of 1982, on the three adverse cases and ground case, registered against the petitioner and the petitioner was thereafter arrested in the ground case. The detaining authority has branded the detenu as a Goonda and has passed the Detention Order, dated 05.04.2019.

3. The learned counsel appearing for the petitioner submitted that there are two adverse cases and a ground case and insofar as the adverse cases are concerned, the detenu had already been granted bail. The learned counsel further contended that the arrest of the detenu in the ground case was not intimated to the near relatives and the same is mandatory, under the Code of Criminal Procedure and therefore, the detention order itself is bad.

4. The learned counsel for the petitioner brought to our notice the arrest memo at page 116 wherein, it is stated that the arrest has been intimated through SMS to a Mobile No.7639266738. The learned counsel, by bringing to our notice this fact submitted that there is no material whatsoever to prove that this mobile number either belongs to mother or any other relative and there is no delivery report that was made available to the detaining authority. Therefore, the valuable right guaranteed, as to the intimation of the arrest, has been denied and the consequent detention order itself stands vitiated.

5. Heard the learned Additional Public Prosecutor appearing on behalf of the respondents.

6. The issue that has been raised by the learned counsel for the petitioner is covered by the earlier Judgment of this Court in ***Rabiya Vs. The Secretary to Government, Home Prohibition and Excise Department, Chennai, in HCP No.2905 of 2018, dated 16.04.2019.*** The relevant portion in the judgment is extracted hereunder:

"4. The learned counsel appearing on behalf of the detenu has drawn the attention of this Court to Page no.136 of the booklet and would submit that the arrest intimation in connection with the ground case was sent through SMS through Mobile No.8124074054 and there is no material whatsoever has been produced that the said mobile phone belongs to either the mother or relative of the detenu and there is no delivery report has also been available. In the absence of the same, valuable right guaranteed to the detenu as to the intimation of his arrest, steps be taken by the detenu to get him out has been denied and hence, prays for appropriate orders.

7. As rightly pointed out by the learned counsel appearing for the petitioner that though in



Page No.136 of the booklet, arrest intimation related to the ground case said to have been sent through mobile phone, it is not clear that the message has been delivered to the concerned address and it is not clear whether the concerned addressee is his relative or his friend. In the absence of vital information, it cannot be said that the arrest intimation has been given to the concerned relative or friend and in the absence of such material, valuable right guaranteed to the detenu as to the further steps taken to get him out in the said case has been vitiated and hence on the sole ground, the impugned order warrants interference. "

7. The facts of the present case is also squarely covered by the above Judgment. In the present case, the arrest intimation relating to the ground case has been sent to a particular mobile phone number and it is not clear as to whom this mobile number belongs and it is also not clear as to whether the message was delivered to the concerned person. Therefore, the intimation after the arrest of the detenu has not been properly made by the Police and the same makes the arrest illegal and consequently, vitiates the detention order. Therefore, this Court has to necessarily interfere with the detention order passed by the 2nd respondent.

8. Accordingly, the Habeas Corpus Petition stands allowed and the Detention Order passed by the second respondent in C.O.C.No.18/2019, dated 05.04.2019, is set aside and the detenu namely Siva, S/o.Ramesh, aged 24 years, who is confined at Central Prison, Tiruchirappalli, is set at liberty forthwith, unless his detention / custody is required in connection with any other case / proceedings.

Sd/-
Assistant Registrar (CS-III)

/TRUE COPY/

Sub Assistant Registrar

RR
To

- 1.The Principal Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George, Chennai.
- 2.The District Collector and The District Magistrate,
Nagapattinam District,
Nagapattinam.



3.The Superintendent,
Central Prison,
Tiruchirappalli

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

**HCP. (MD) .No.346 of 2019
04.10.2019**

JM/24.10.2019/4P/5C