



WEB COPY

HCP(MD).No.495 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.09.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

AND

THE HONOURABLE MR.N.ANAND VENKATESH

HCP.(MD).No.495 of 2019

Sonaimuthu

... Petitioner

Vs.

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

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

3.The Superintendent of Prison,
Central Prison, Tiruchirapalli.

... Respondents

PRAYER: This petition is filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, to call for the records pertaining to the impugned detention order passed by the second respondent, made in his proceedings in Cr.M.P.No.05/Goonda/2019, dated 21.03.2019 in detaining the detenu under Section 2(f) of the Tamil Nadu Act 14 of 1982, as Goonda and quash the same and to direct the respondents to produce the detenu, namely, Sathishkumar @ Sathish @ Santhoshkumar, S/o.Sonaimuthu, Male, aged about 21 years, who is detained in Central Prison, Trichy before this Court and set him at liberty.

For Petitioner : Mr.K.M.Karunakaran

For Respondents : Mr.K.Dinesh Babu
Additional Public Prosecutor

O R D E R

S.VAIDYANATHAN, J.

AND

N.ANAND VENKATESH, J.

The petitioner is the father of the detenu, who, vide impugned Order of Detention, dated 21.03.2019, passed by the 2nd respondent by invoking Section 2(f) of the Tamil Nadu Act 14 of 1982, in branding the detenu as 'Goonda', came forward to file this Habeas Corpus petition.

<https://hcservices.ecourts.gov.in/hcservices/>



2. The Sponsoring Authority has recommended for the detention of the Petitioner's son, under Act 14 of 1982, on the adverse cases and ground case, registered against the petitioner's son and the detenu was thereafter arrested in the ground case. The detaining authority has branded the detenu as a Goonda and has passed the Detention Order, dated 21.03.2019.

3. The learned counsel appearing for the petitioner submitted that there is 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 95 wherein, it is stated that the arrest has been intimated through SMS to a Mobile No.7639364407. 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, wife 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 Cr.M.P.No.05/Goonda/2019, dated 21.03.2019, is set aside and the detenu, namely, Sathishkumar @ Sathish @ Santhoshkumar, S/o.Sonaimuthu, Male, aged about 21 years, who is detained in Central Prison, Trichy, is set at liberty forthwith, unless his detention / custody is required in connection with any other case / proceedings.

Sd/-

Assistant Registrar (CO)

/ True Copy /

Sub Assistant Registrar(CS-)

To

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

<https://hcservices.ecourts.gov.in/hcservices/>



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

3.The Superintendent of Prison,
Central Prison,
Tiruchirapalli.

4. The Joint Secretary to Government,
Public (Law & Order) Department,
Fort.St.George, Chennai -9.

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

HCP. (MD) .No.495 of 2019
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