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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.12.2019

CORAM:

THE HONOURABLE MR.JUSTICE T.RAJA

and

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

H.C.P(MD)No.593 of 2019

S.Poongkodi

... Petitioner

Vs.

1.State of Tamilnadu,

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

3.The Superintendent ,
Central Prison,
Tiruchirappalli.

... Respondents

Prayer: Habeas Corpus Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Habeas Corpus, calling for the entire records, connected with the detention order of respondent No.2 in C.O.C.No.31/2019 dated 27.06.2019 and quash the same and direct the respondents to produce the body or person of the detenu by name Selvakumar @ Kadugu, Son of Selvaraj, aged about 28 years, now detained at Central Prison, Tiruchirappalli, before this Court and set him at liberty forthwith.

For Petitioner : Mr.K.A.S.Prabhu

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

O R D E R

(Order of the Court was made by **T.RAJA, J.**)

The petitioner is the wife of the detenu and challenging the impugned order of detention dated 27.06.2019 passed by the second respondent, branding her husband as a Boot Legger under the provisions of Section 3[1] of the Tamil Nadu Prevention of



Dangerous Activities of Boot leggers, 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 14/1982), she has filed the present habeas corpus petition.

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2. A perusal of the grounds of detention dated 27.06.2019 would show that the detainee came to the adverse notice in the following cases:

S.No.	Name of Police Station and Crime No.	Section of Law
1	Sembanarkoil Police Station, Crime No.136 of 2018	4(1)(aaa) r/w 4(1-A) TNP Act, 1937 @ 4(1)(aaa) TNP Act, 1937.
2	Perambur Police Station, Crime No.311 of 2018	4(1)(aaa) r/w 4(1-A) TNP Act, 1937.
3	Mayiladuthurai Prohibition Enforcement Wing, Crime No.97 of 2019	4(1)(aaa) r/w 4(1-A) TNP Act, 1937 @ 4(1)(aaa) TNP Act, 1937.

It is further stated in the grounds of detention that the detainee was also involved in the commission of offence under Sections 4(1)(aaa) r/w 4(1-A) TNP Act, 1937, in Crime No.302 of 2019, on the file of Mayiladuthurai Prohibition Enforcement Wing. The detainee was arrested on 05.06.2019 and was produced before the Judicial Magistrate No.II, Mayiladuthurai, on the same day and was ordered to be remanded to judicial custody. The Detaining Authority, on a perusal and consideration of the materials, has derived the subjective satisfaction that the activities of the detainee were prejudicial to the public order and peace, branded him as a Boot Legger and detained him under the provisions of the Tamil Nadu Act 14 of 1982, vide the impugned order of detention and challenging the legality of the same, the present petition is filed.

3. The learned Counsel for the petitioner would submit that in connection with the ground case, the detainee was arrested on 05.06.2019 and the arrest intimation was given to his mother, namely, Rajalakshmi, through SMS to her Mobile No.82709-38342. But, for having sent the arrest intimation to the mother of the detainee through SMS, no material, whatsoever, has been produced. In support of this contention, the learned Counsel has invited the attention of this Court to Page No.60 of the booklet, where the signature of the concerned person to whom the SMS was sent was not obtained in the arrest intimation form. He has also relied upon a decision of this Court in ***H.C.P.(MD)No.26 of 2019, dated 07.06.2019***, in the case of ***Natarajan vs. State of Tamil Nadu and Ors.***



4. Per contra, the learned Additional Public Prosecutor appearing for the respondents would submit that the Detaining Authority, after due and proper application of mind, has rightly clamped the order of detention. But, he is unable to satisfy this Court as to why the signature of the detainee's mother was not obtained in the arrest intimation form.

5. This Court has considered the rival submissions and also perused the materials placed before it.

6. A perusal of Page No.60 of the booklet would disclose that the arrest intimation of the detainee in connection with the ground case was sent to his mother through SMS to her mobile number. But, neither the receipt of the SMS was acknowledged by the mother of the detainee 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 mother of the detainee, 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**.

7. In the decision referred to by the learned Counsel for the petitioner, in **H.C.P. (MD)No.26 of 2019, dated 07.06.2019**, wherein one of us [Hon'ble Mr.JUSTICE B.PUGALENDHI] is a party to the judgment, this Court, taking note of the fact that the detainees's wife was not informed about the arrest, has quash the detention order. The relevant portion from the said decision is extracted as under:

"8. As rightly pointed out by the learned counsel appearing for the petitioner, perusal of page No.20 of the booklet would disclose that though the arrest intimation was given to his wife/Kavitha through Mobile No.8012668200, neither the text of the intimation given nor the signature of the person, has been found place and the same is in violation of D.K.Basu Vs. State of West Bengal, reported in AIR (1997) SC 610 and hence, on the sole ground, the impugned order of detention is liable to be quashed."

8. In view of the aforementioned reasoning and the decision of this Court (supra), the impugned order of detention passed by the second respondent in C.O.C.No.31/2019, dated 27.06.2019, is liable to be quashed and the same is accordingly, quashed. The detainee, namely, Selvakumar @ Kadugu, Son of Selvaraj, is directed to be set at liberty forthwith, unless his remand / detention is required, in accordance with law, in connection with any other case / proceedings.



9. In fine, this Habeas Corpus Petition stands allowed.

Sd/-

Assistant Registrar ()

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/ /2020

Sub Assistant Registrar (CS)

gk

To

- 1.The Principal Secretary to Government,
State of Tamilnadu,
Home, Prohibition and Excise Department,
Fort St. George,
Chennai - 600 009.
- 2.The District Collector and District Magistrate,
O/o. The District Collector and District Magistrate,
Nagapattinam District,
Nagapattinam.
- 3.The Superintendent of Prison,
Central Prison,
Tiruchirappalli.
- 4.The Joint Secretary to Government
Public(law and order)
Fort.St.George, Chennai-9
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

H.C.P (MD) No.593 of 2019

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