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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.12.2019

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THE HONOURABLE MR.JUSTICE T.RAJA

AND

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

H.C.P(MD)No.665 of 2019

Shanmugavalli ... Petitioner

Vs.

1.The State Rep. by
The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George,
Chennai - 600 009.

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

3.The Superintendent of Central Prison,
Tiruchirappalli. ... Respondents

Prayer : Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Habeas Corpus to call for the records of the 2nd respondent in detention order in Cr.M.P.No.27/2019 dated 23.06.2019 and to set aside the order of detention passed by the 2nd respondent herein setting the detenu by name Prabakaran, S/o.Thangadurai, at liberty, now detained at Central Prison, Tiruchirappalli.

For Petitioner : Mr.R.Rajaraman

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

ORDER

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

The petitioner is the mother of the detenu viz. Prabakaran and challenging the legality of the impugned order of detention dated 23.06.2019, passed by the second respondent, under Section 3 (1) of Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Cyber Law Offenders, Drug Offenders, Forest Offenders, Goondas,

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Immoral Traffic Offenders, Sand Offenders, Sexual Offenders, Slum Grabbers and Video Pirates Act, 1982, (Tamil Nadu Act 14 of 1982) and branding him as 'Sand Offender' in Cr.M.P.No.27/2019, came forward to file the present Habeas Corpus Petition.

2.A perusal of the Grounds of Detention dated 23.06.2019, passed by the 2nd respondent herein, would disclose among other things that the detenu, viz.,Prabakaran was involved in a solitary case for the commission of offences under Sections 379, 353, 307 I.P.C. r/w 21(1) Mines and Minerals (D and R) Act, 1957 in Thathiengarpettai Police Station Crime No.55 of 2019 (ground case). The detenu was arrested on 17.06.2019 and produced before the Court of Judicial Magistrate, Thuraiyur on the same day and remanded to Judicial custody. The detaining authority on 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 making a challenge to the same, the present Habeas Corpus Petition has been filed by the petitioner.

3.We have heard Mr.R.Rajaraman, learned counsel appearing for the petitioner and Mr.K.Dinesh Babu, learned Additional Public Prosecutor appearing for the respondents and perused the materials available on record.

4.Learned counsel appearing for the petitioner has drawn the attention of this Court to page Nos.27 & 28 of the booklet and would submit that after the arrest of the accused in ground case in Crime No.55 of 2019, the arrest intimation was not communicated to the family members of the detenu and though the arrest intimation was said to have been sent to the mobile No.8489852707 through SMS, the person to whom the message was sent to the said mobile number has not been identified and the signature of the concerned person has also not been obtained and in the light of the non-communication of the arrest intimation, the guidelines given by the Hon'ble Apex Court reported in ***AIR (1997) SC 610 [D.K. Basu v. State of West Bengal]*** is violated and as such, the impugned order of detention is liable to be quashed.

5.In support of his submission, the learned counsel appearing for the petitioner has relied on an unreported order of this Court ***dated 07.06.2019*** made in ***H.C.P.(MD) No.26 of 2019*** in the matter of ***Natarajan v. State of Tamil Nadu, rep. by The Principal Secretary to Government and two others***, in which one of us (B.PUGALENDHI, J) was a party. The relevant portion of the order runs thus:

> "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

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the person, has been found place, hence the same is in violation of ***D.K. Basu v. 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."

6.Though we have heard the learned Additional Public Prosecutor appearing for the respondents, we are unable to find any explanation as to why the arrest intimation was not communicated to the family members of the detenu. Further, page No.28 of the booklet shows neither the text of the intimation is given nor the signature of the person, who is said to have been informed has been obtained. That clearly shows that the arrest intimation was not given to the family members of the detenu, hence, the non-communication of the arrest intimation violates the guidelines given by the Hon'ble Apex Court reported in ***AIR (1997) SC 610 [D.K. Basu v. State of West Bengal]*** and as such, the impugned order of detention is liable to be set aside.

7.The Hon'ble Apex Court in ***Rekha v. State of T.N. reported in (2011) 5 SCC 244*** has ruled that the preventive detention is, by nature repugnant to democratic ideas and an anathema to the rule of law. No such law exists in the USA and in England (except during war time). It may be mentioned herein that in cases of preventive detention no offence is proved and the justification of such detention is suspicion or reasonable probability, and there is no conviction which can only be warranted by legal evidence. When the detaining authority passes the order of detention on subjective satisfaction, as per clause (3) of Article 22 the detenu is not entitled to a lawyer or the right to be produced before a Magistrate within 24 hours of arrest. Such article excludes the applicability of clauses (1) and (2). However, to prevent misuse of this potentially dangerous power the law of preventive detention has to be strictly construed and meticulous compliance with the procedural safeguards, however technical, is, in our opinion, mandatory and vital.

8.The exclusion of applicability of clauses (1) and (2) of Article 22 does not mean that the arrest of detenu should not be informed to his family members, which is *sine qua non*, therefore, the non-compliance would vitiate the very detention itself. Applying this ratio here, we hold that the non-compliance of the mandatory condition that the family members of the detenu should be informed of his arrest having not been done in this case, would vitiate the very detention itself. Accordingly, on this sole ground, the detention order is liable to fall.

9.In the result, the Habeas Corpus Petition is allowed by setting aside the Order of Detention passed by the second respondent herein, namely, the District Collector, Tiruchirappalli District, Tiruchirappalli in Cr.M.P.No.27/2019 dated 23.06.2019. Consequently,

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the detenu, namely, Prabakaran, son of Thangadurai, aged about 27 years, who is now detained at Central Prison, Tiruchirappalli is directed to be released forthwith unless his presence [or] custody [or] detention is required in connection with any other case/proceedings.

Sd/-

Assistant Registrar(AD-I)

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Sub Assistant Registrar(CS)

sj

To

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

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

3.The Superintendent of Central Prison,
Tiruchirappalli.

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

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

+1 CC to M/s.R.RAJARAMAN, Advocate (SR-106454[F] dated 26/12/2019)

H.C.P(MD)No.665 of 2019
20.12.2019

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