

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.10.2020

Coram

The Hon'ble Mr. Justice M.M.SUNDRESH
and
The Hon'ble Mr. Justice D.KRISHNAKUMAR

H.C.P. No. 671 of 2020

Parimala

.. Petitioner

Vs.

1. The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Fort St.George,
Chennai-600 009
2. The District Collector and District Magistrate,
Ranipet,
Ranipet District.
3. The Superintendent of Police,
O/o.Superintendent Office,
Ranipet,
Ranipet District.
4. The Superintendent of Prison,
Central Prison,
Vellore District.
5. State,rep.by its
The Inspector of Police,
Sholinghur Police Station,
Ranipet District

...Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus calling for the entire records relating to the petitioner's husband detention under Tamil Nadu Act 14 of 1982 vide detention order, dated 28.02.2020 on the file of the second respondent herein made in proceedings B3/D.O.No.22/2020, quash the same as illegal and consequently direct the respondents herein to produce the petitioner's husband namely Anniyappan, S/o.Vadivel, aged 45 years, before this Court and set the petitioner's husband at liberty from detention, now the petitioner's husband detained at Central Prison, Vellore.

For Petitioner : Mr.G.P.Sivakumar

For Respondents Mr.R.Prathap Kumar,
: Addl. Public Prosecutor

ORDER

[Order of the Court was made by M.M.SUNDRESH, J.]

The petitioner is the wife of Anniyappan, S/o.Vadivel, aged 45 years, who is the detenu. The detenu has been detained by the second respondent by his order in B3/D.O.No.22/2020, dated 28.02.2020, holding him to be a "Bootlegger", as contemplated under Section 2(b) of Tamil Nadu Act 14 of 1982. The said order is under challenge in this Habeas Corpus Petition.

2.We have heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the respondents.

3. Amidst several grounds raised by the learned counsel for the petitioner to attack the impugned order of detention, he has mainly focused his argument on the ground that the detaining authority failed to ask clarification from the sponsoring authority about non serving of arrest memo to the family members, relatives or friends of the detenu and there is no proof to show that the intimation of arrest was given, which clearly shows non-application of mind on the part of detaining authority.

4. A close reading of the booklet, especially the arrest memo at Page No.44, shows that no proof has been annexed in the booklet with regard to intimation of arrest of detenu to the family members, relatives or friends as mandated by the Constitution. It is also to be remembered that in order to meet fairness, justness and reasonableness, after a person is taken into custody in pursuance of an order of detention, the members of his household, preferably the parent, the child or the spouse, must be informed in writing of the passing of the order of detention and of the fact that the detenu has been taken into custody, by duly intimating as to the place of detention, including the place where the detenu is transferred from time to time, which would ensure the right of the person arrested under preventive detention. If such intimation of arrest has not been made effectively, then, it would confer a right upon the arrestee to impugn the arrest effected on him.

5. In the case on hand, there is no proof to exhibit such intimation of arrest to the family members of the detenu. Thus, on account of the failure of the detaining authority in communicating the arrest of detenu to the family members, the detention order would be vitiated on the ground of deprivation of right guaranteed under Article 22(1) of the Constitution of India. Thus, for the reasons stated herein-above, the impugned detention order cannot be sustained.

7. Accordingly, the impugned detention order passed by the second respondent, detaining the detenu, namely, Anniyappan, S/o.Vadivel, aged 45 years, made in B3/D.O.No.22/2020, dated 28.02.2020, is quashed and the habeas corpus petition is allowed. The above named detenu, who is detained at the Central Prison, Vellore, is ordered to be set at liberty forthwith, unless his custody is required in connection with any other case.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

mmi/ssm

To

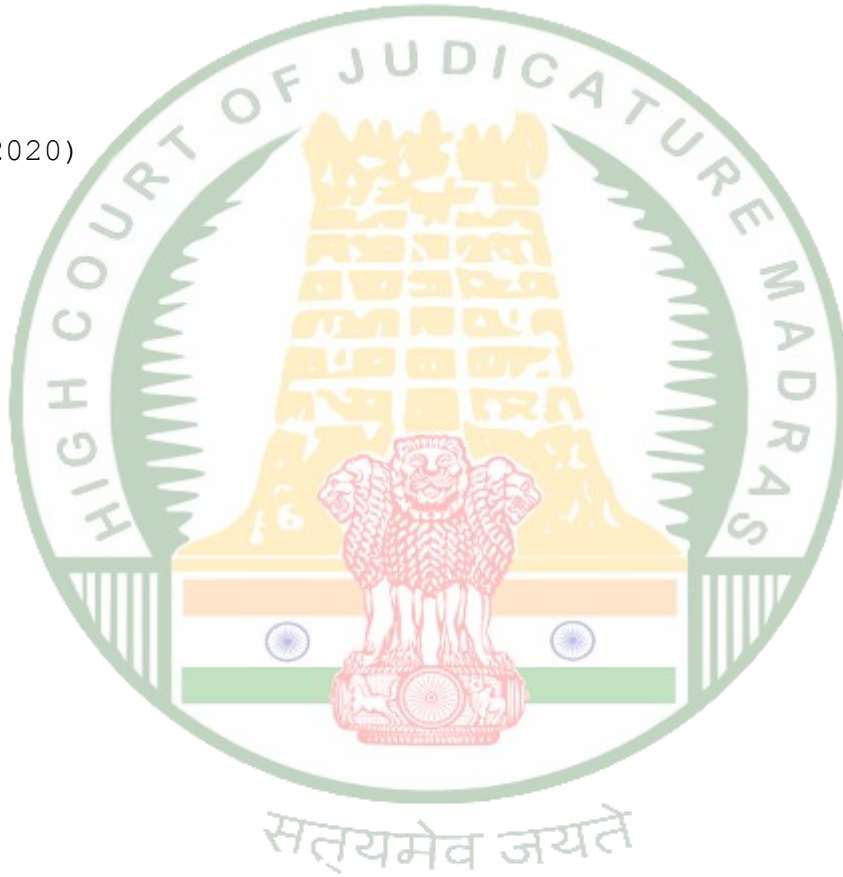
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5. The Inspector of Police,
Sholinghur Police Station,
Ranipet District

6.The Public Prosecutor,
High Court, Madras.

7.The Joint Secretary to Government
Public (Law and order)
Fort. St. George
Chennai 9.

H.C.P. No.671 of 2020

SSV(CO)
SP(09/11/2020)



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