

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.11.2020

Coram

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

H.C.P. No. 838 of 2020

Udhayarani

...Petitioner

-vs-

1. The State of Tamil Nadu
Rep. by its Secretary to Government
Department of Home, Prohibition and Excise,
Secretariat,
Fort St. George, Chennai 600 009.
2. The Commissioner of Police,
Greater Chennai,
Office of Commissioner of Police,
Vepery, Chennai - 7.
3. The Superintendent of Police,
Central Prison, Puzhal II,
Chennai.
4. The Inspector of Police,
P-5 MKB Nagar Police Station,
Chennai - 600 039.

... Respondents

Petition filed under Article 226 of the Constitution of India to issue a writ of habeas corpus calling for the records in Memo No.217/BCDFGISSSV/2020 passed by the second respondent on 23.03.2020 on the file of the 2nd respondent and quash the same as illegal and consequently direct the respondent to produce petitioner brother Soundarrajan, son of Muruganandam, aged 24 years, before this Court, who now detained in Central Prison, Puzhal II and set him at liberty.

For Petitioner : Mr.A.Elumalai

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 sister of Soundarrajan, son of Muruganandam, aged 24 years. The detenu has been detained by the second respondent by his order in No.217/BCDFGISSSV/2020, dated 23.03.2020, holding him to be a "Goonda", as contemplated under Section 2(f) 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 and we have also perused the records carefully.

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 shows that though there is a mention about the adverse cases and ground case in the impugned order of detention, particularly Page No.46 of the booklet, there is no proof to show that the arrest of detenu has been intimated 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.

6. In the result, the Habeas Corpus Petition is allowed and the order of detention in No.217/BCDFGISSSV/2020, dated 23.03.2020, passed by the second respondent is set aside. The detenu, namely, Soundarrajan, son of Muruganandam, aged 24 years is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Secretary to Government
Department of Home, Prohibition and Excise,
Secretariat,
Fort St. George, Chennai 600 009.

2. The Commissioner of Police,
Greater Chennai,
Office of Commissioner of Police,
Vepery, Chennai - 7.

3. The Superintendent of Police,
Central Prison, Puzhal II,
Chennai.

4. The Joint Secretary to Government,
Public(Law&Order), Fort saint George,
Ch-9.

5. The Inspector of Police,
P-5 MKB Nagar Police Station,
Chennai - 600 039.

6. The Public Prosecutor,
High Court, Madras.

H.C.P. No. 838 of 2020

SV(CO)
RV(04/12/2020)