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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.03.2020

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
AND
THE HONOURABLE MRS.JUSTICE R.HEMALATHA

H.C.P.No.2535 of 2019

D.Palaniammal

... Petitioner

Vs

1. State of Tamil Nadu,
Rep. By its Secretary to Government Home,
Prohibition and Excise Department,
Fort St.George, Chennai - 600 009.

2. The Commissioner of Police,
Greater Chennai,
The Commissioner Office,
Vepery, Chennai - 600 007.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Habeas Corpus, calling for the records relating to the detention order in Memo No.565/BCDFGISSSV/2019, dated 06.09.2019 passed by the second respondent under the Tamil Nadu Act 14 of 1982 and set aside the same and direct the respondents to produce the petitioner's son Karthick @ Mariyappan the detenu, now confined in Central Prison, Puzhal, Chennai before this Court and set the petitioner's son Karthick @ Mariyappan S/o.Devadass, Aged about 24 years the detenu herein at liberty.

For Petitioner : Mr.S.Sugendran

For Respondents: Mr.R.Prathap Kumar
Additional Public Prosecutor.

O R D E R

(Order of the court was made by MRS.R.HEMALATHA.J.,)

Challenge is made to the Order of detention passed by the second respondent, the Commissioner of Police, dated 06.09.2019, whereby the son of the petitioner by name Karthick @ Mariyappan S/o.Devadass aged about 24 years was ordered to be detained under the Provisions of Tamil Nadu Prevention of Dangerous



Activities of Bootleggers, Cyber Law Offenders, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Sexual Offenders, Slum Grabbers and Video Pirates Act 1982 (in short Tamil Nadu Act 14/1982).

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2.As per the grounds of Order of detention dated 06.09.2019, passed by the second respondent, the detenu was detained under the aforesaid Act since a criminal prosecution was initiated against him in Cr.No.342 of 2019 of Vadapalani Police Station under Sections 341, 397, 336, 427 & 506 (ii) of Indian Penal Code. Apart from this case, the following six adverse cases were registered against the detenu. They are (i) Cr.No.66 of 2019 of R-5, Virugambakkam Police Station for the offence under Sections 457, 380 of Indian Penal Code, (ii) Cr.No.112 of 2019 of R-4, Soundarapandiyanar Angadi Police Station for the offence under Sections 454, 380 of Indian Penal Code, (iii) Cr.No.158 of 2019 of R-3, Ashok Nagar Police Station for the offence under Sections 457, 380 of Indian Penal Code, (iv) Cr.No.444 of 2019 of R-10, M.G.R.Nagar Police Station for the offence under Sections 454, 380 of Indian Penal Code, (v) Cr.No.336 of 2019 of R-8, Vadapalani Police Station for the offence under Sections 380, 511 of Indian Penal Code and (vi) Cr.No.340 of 2019 of R-8, Vadapalani Police Station for the offence under Sections 457, 380 of Indian Penal Code.

3.Heard Mr.S.Sucendran, learned Counsel for the petitioner and Mr.R.Prathap Kumar, learned Additional Public Prosecutor for the respondents.

4.The learned Counsel appearing for the petitioner contended that the order of detention is liable to be set aside on the following grounds;

(i)Arrest intimation was not given to the close relative or friend of the detenu.

(ii)There is an abnormal delay in considering the representation given by the detenu.

5.I Ground: A perusal of the records shows that though arrest intimation was sent to the mother of the detenu through Short Message Service (SMS), there is absolutely no record to substantiate the same. The learned Additional Public Prosecutor contended that the statement of the mother of the detenu was recorded under Section 161 of Criminal Procedure Code. However, it is seen that no signature of the mother of the detenu was obtained by the concerned police officer. Therefore, it cannot be said that proper intimation was given to the mother of the detenu and hence, it is a clear cut violation of Section 50A of Criminal Procedure Code.



6.II Ground: It is seen from the records that there is an abnormal delay of 25 days in considering the representation submitted by the detenu.

7. In the decision in "C.Muthuvali Vs. The Principal Secretary to Government, Home Prohibition and Excise Department, Government of Tamil Nadu, Secretariat, Chennai - 600 009" reported in "[(2017) (1) MWN (Cr.) 270 (DB)]" it has been held that an unexplained delay of nine working days on the part of the Government in considering the representation rendered the decision illegal. Another Division Bench of this Court in "Samaiah Vs. The Secretary to Government" reported in "[(2007) (4) MWN (Cr.) 145]" has held that an unexplained delay of three days in disposal of the representation made by the detenu would be sufficient to set aside the detention order.

8. Further, a larger Bench of the Supreme Court in "Rekha Vs. The State of Tamil Nadu" reported in "2011 5 SCC 244" has held that "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). Since, however, Article 22(3)(b) of the Constitution of India permits preventive detention, we cannot hold it illegal but we must confine the power of preventive detention within very narrow limits, otherwise we will be taking away the great right to liberty guaranteed by Article 21 of the Constitution of India which was won after long, arduous, historic struggles". Since there is an unexplained delay in considering the representation submitted by the detenu and the arrest intimation was not given to the close relative or friend of the detenu, the detention order passed by the second respondent is liable to be set aside.

9. Accordingly, this petition is allowed by setting aside the order of detention passed by the second respondent in Memo No.565/BCDFGISSSV/2019, dated 06.09.2019 and the detenu is directed to be set at liberty forthwith, unless his detention is required in connection with any other case. It is also made clear that this order will not affect the criminal cases pending against the detenu.

Sd/-

Assistant Registrar(CS III-MDU)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to Government Home,
State of Tamil Nadu,
Prohibition and Excise Department,
Fort St.George, Chennai - 600 009.
2. The Commissioner of Police,
Greater Chennai,
The Commissioner Office,
Vepery, Chennai - 600 007.
3. The Additional Public Prosecutor,
High Court of Madras,
Chennai.
4. The Joint Secretary to Government
Public (L & O) Department,
Fort St.George, Chennai-9.
5. The Superintendent,
Central Prison, Puzhal,
Chennai.

H.C.P.No.2535 of 2019

SAI (CO)
CS/08/07/2020