

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.2594 of 2019

Alima ... Petitioner/Wife of the detenu

Vs

1. The Secretary to the Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai - 600 009.
2. The Commissioner of Police,
Greater Chennai.

... 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 in connection with the order of detention passed by the second respondent dated 25.10.2019 in Memo No.709/BCDFGISSSV/2019 against the petitioner husband Noorudeen @ Rafi @ Ismail, male aged 37 years S/o.Siraj, who is confined at Central Prison, Trichy and set aside the same and direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner : Mr.S.Senthil

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

ORDER
(Order of the court was made by N.KIRUBAKARAN.J.,)

The petitioner has been detained under Tamil Nadu Act 14 of 1982 by virtue of detention order dated 25.10.2019 and the said Order is challenged before this Court.

2.Heard Mr.S.Senthil, learned Counsel appearing for the petitioner and Mr.R.Prathap Kumar, learned Additional Public

Prosecutor appearing for the respondents.

3.It is seen from the records that apart from the ground case, the detenu has got one adverse case registered against him. It is seen that on 06.09.2019, he committed the offence of robbery of Rs.7,000/- from one Mr.Krishnamurthy and therefore, a case has been registered in Cr.No.254 of 2019 on the file of the C1 Flower Bazaar Police Station for the offence under Sections 341, 294(b), 336, 427, 392, 397 & 506 (ii) of Indian Penal Code. Since two cases are pending against the detenu, to prevent him from continuing with the offence, the detaining authorities have detained him under Goondas Act branding him as 'Goonda'.

4.The learned Counsel for the petitioner submitted that the petitioner's husband was formally arrested in the ground case on 18.09.2019 and the detention order was passed only on 25.10.2019 and hence, there is a delay of nineteen days in passing the detention order. Secondly, he would submit that arrest details were not informed to the close relative or friend of the detenu which is mandated under Section 50 A of Criminal Procedure Code. Further, the learned Counsel for the petitioner pointed out that there was a delay in disposing of the representation given by the detenu. Hence, he seeks to set aside the detention order passed by the second respondent. On the other hand, the learned Additional Public Prosecutor supported the detention order and sought for dismissal of this petition.

5.A perusal of the records would show that the petitioner's husband was already arrested in the adverse case and hence, he was formally arrested in the ground case through P.T.Warrant on 18.09.2019. Further, though the learned Additional Public Prosecutor contended that arrest was informed to the close relative viz., the petitioner through message and Statement under Section 161 of Criminal Procedure Code was recorded, on perusal of the said statement, it is seen that there was no signature of the petitioner. Moreover, the message sent is not proved by electronic evidence.

6.Even the perusal of the remand report reveals that the police officer has only stated that the arrest of the detenu has been informed. Based on the said statement, the Magistrate has also remanded the detenu to Judicial custody. This Court is of the view that mere sending of the message is not sufficient unless it is proved. No such evidence is available in the records.

7.Further, it is seen that he was arrested in the ground case on 18.09.2019 under P.T.Warrant. However, the detention order is passed only on 25.10.2019 after the lapse of the

mandatory period of thirty days. Therefore, it is seen that there is a delay in passing the detention order and the arrest of the detenu was not informed to his close relative or friend as mandated under Section 50 A of Criminal Procedure Code. Hence, the detention order passed by the second respondent in Memo No.709/BCDFGISSSV/2019 dated 25.10.2019 is set aside and accordingly, this petition is allowed and the detenu is set at liberty.

8.It is seen that in most of the cases, the detention order is set aside since the police are not producing proof for having sent the arrest intimation through message either to the close relative or friend of the arrested person. Therefore, this Court directs the police authorities to send the arrest intimation through RPAD as well as through Whatsapp so that the proof regarding the same can be filed before this Court by enclosing the same in the booklet.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1.The Secretary to the Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai - 600 009.

2.The Commissioner of Police,
Greater Chennai.

3.The Superintendent ,Central Prison,
Trichy.

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

5.The Additional Public Prosecutor,
High Court,Madras.

H.C.P.No.2594 of 2019

RR(CO)
GS(03/08/2020)