



WEB COPY

H.C.P.(MD) No.10 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.08.2020

CORAM:

**THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM
and**

THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

H.C.P. (MD) No.10 of 2020

Vairavan

... Petitioner

-VS-

1.State of Tamil Nadu

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
Tirunelveli District, Tirunelveli

3.The Superintendent of Prison
Central Prison, Palayamkottai
Tirunelveli

... Respondents

PRAYER : Petition is filed under Article 226 of the Constitution of India praying for the issue of a Writ of Habeas Corpus calling for the entire records connected with the detention order passed in M.H.S.Confdl.No.100/2019, dated 18.12.2019, on the file of the second respondent herein and quash the same and direct the respondents to produce the detenu or body of the detenu namely Vairavan, aged about 49 years, son of Athali Nadar, now detained at Central Prison, Palayamkottai, before this Court and set him at liberty forthwith.

For Petitioner : Mr.N.Pragalathan

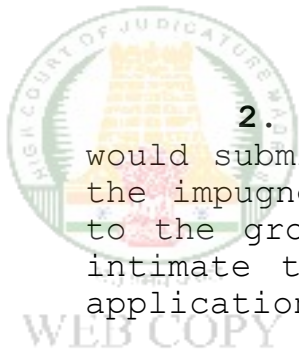
For Respondents : Mr.V.Neelakandan

Additional Public Prosecutor

O R D E R

(Order of the Court was made by K.KALYANASUNDARAM, J.)

This habeas corpus petition has been filed by the detenu, namely, Vairavan, son of Athali Nadar, aged about 49 years, against the detention order in M.H.S.Confdl.No.100/2019, dated 18.12.2019, passed by the second respondent, branding him as "Boot-Legger" as contemplated under Section 2(b) of the Tamil Nadu Act 14 of 1982.



2. Mr.N.Pragalathan, learned counsel for the petitioner, would submit that though several grounds have been raised to assail the impugned detention order, he confined his arguments with regard to the grounds, namely, failure on the part of the respondents to intimate the arrest of the detenu to the family members and non-application of mind on the part of the Detaining Authority.

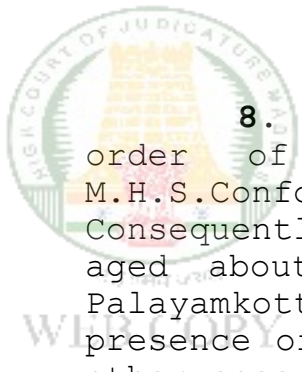
3. It is contended by the learned counsel for the petitioner that the devenu was arrested on 02.12.2019 and the arrest was intimated only through SMS, however, no particulars are available in the booklet as to whether the cell number belongs to his family members. It is further contended that the similar case referred by the Detaining Authority is not similar to the case of the detenu.

4. Per contra, Mr.V.Neelakandan, learned Additional Public Prosecutor, on instructions, would submit that the detention order came to be passed by the second respondent on cogent and relevant materials furnished by the Sponsoring Authority and the arrest was also properly intimated to the family members and there is no flaw in the detention order and hence, prayed for dismissal of the habeas corpus petition.

5. Heard Mr.N.Pragalathan, learned counsel for the petitioner and Mr.V.Neelakandan, learned Additional Public Prosecutor for the respondents and perused the materials available on record.

6. It is evident from the Arrest Intimation Form available at Page No.195 of the booklet that the arrest of the detenu in the ground case was intimated to the Cell No.8772638495. But, there is no material to show that the said cell number belongs to the family members of the detenu and the text of the message is also not found in the booklet. We are of the view that this non-intimation of arrest of the detenu would deprive his family members from making effective representation for revocation of the detention order. Our view has been supported by the decision of the Apex Court in the case of **D.K.Basu vs. State of West Bengal**, reported in **AIR (1997) SC 610**.

7. Admittedly, the detenu has three adverse cases to his credit. But, the Detaining Authority, to arrive at the subjective satisfaction, has relied on the bail order, dated 24.02.2017 in Cr.M.P.No.899 of 2017, granted to one Iyyappan, by the learned Principal Sessions Judge, Tirunelveli. A perusal of the bail order available at Page No.275 of the booklet would show that the accused in that case did not have any previous case. Hence, as rightly, pointed out by the learned counsel for the petitioner, the similar case relied on by the Detaining Authority in the detention order is not similar to the case of the detenu. Hence, on these two grounds the impugned detention order is liable to be set aside.



8. In fine, the Habeas Corpus Petition is allowed. The order of detention passed by the second respondent, in M.H.S.Confdl.No.100/2019, dated 18.12.2019, is set aside. Consequently, the detenu, namely, Vairavan, son of Athali Nadar, aged about 49 years, who is now detained at Central Prison, Palayamkottai, is directed to be released forthwith unless his presence or custody or detention is required in connection with any other case.

Sd/-

Deputy Registrar

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

Note :

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

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,
Tirunelveli District, Tirunelveli.
- 3.The Superintendent of Prison,
Central Prison, Palayamkottai, Tirunelveli.
- 4.The Joint Secretary to Government,
Public (Law and Order),
Fort Saint George, Chennai -09.
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

H.C.P. (MD) No.10 of 2020

12.08.2020

krk

SDS (21.08.2020) 3P-6C

<https://hcservices.ecourts.gov.in/hcservices/>