



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 31.07.2020

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM
and
THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

H.C.P. (MD) No.47 of 2020

Vaheeswari

... Petitioner

-vs-

1.State of Tamil Nadu rep. By
The Secretary to Government,
Home, Prohibition and Excise Department
Secretariat, Chennai-600 009.

2.The District Collector and District Magistrate
O/o District Collector and District Magistrate,
Kanyakumari District, at Nagercoil.

3.The Superintendent, Central Prison,
Palayamkottai.

... 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 in detention order passed in P.D.No.45/2019 dated 15.11.2019 on the file of the second respondent herein and set side the same as illegal and direct the respondents to produce the body or person of the petitioner's son namely Ananth Son of Thangadurai, male, aged about 36 years, who is detained in Central Prison, Palayamkottai, before this Court and set him at liberty.

For Petitioner : Mr.M.Murugesan

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 mother of the detenu, namely, Ananth Son of Thangadurai, male, aged about 36 years, against the Detention Order made in P.D.No.45/2019 dated 15.11.2019, passed by the second respondent, branding him as "Goonda" as contemplated under Section 2(f) of Tamil Nadu Act 14 of 1982.



2.Mr.M.Murugesan, learned counsel for the petitioner submitted that the impugned detention is liable to be set aside on the ground of failure to intimate the arrest of the detenu either to his family members or his relatives. He would further submit that no details have been furnished particularly the cell number mentioned at page No.263, whether it belongs to the family members of the detenu or his relatives. It is also stated that the text of the SMS also not found in the booklet. In this regard, the learned counsel has placed reliance upon the decision of the Honourable Apex Court in the case of **D.K.Basu vs. State of West Bengal**, reported in **AIR (1997) SC 610**.

3. Per contra, Mr.V.Neelakandan, learned Additional Public Prosecutor, while reiterating the averments in the counter affidavit filed by the second respondent, submitted that the detention order has been passed by the Detaining Authority after scrutinizing the relevant materials produced by the Sponsoring Authority and there is no illegality or infirmity in the detention order and hence, prayed for dismissal of the habeas corpus petition.

4.We have heard the rival submissions and perused the materials available on records.

5. A perusal of the arrest intimation form available at Page No.263 of the booklet shows that the arrest of the detenu in the ground case was intimated through SMS to the Cell No.7397063820. However, there is no material to show that the said Cell Number belongs to the family members of the detenu or his relatives and the text of the message is also not found place in the booklet. This Court, following the decision of the Honourable Apex Court in the case of **D.K.Basu** (cited supra), in several cases, has consistently held that if there is no proper intimation of arrest of the detenu either to his family members or his relatives, his valuable rights would seriously prejudiced on the sense that they will not have the opportunity to make effective representation to the Authority concerned in time for revocation of the detention order.

6. For the foregoing reasons, we are convinced that the detention order impugned in this habeas corpus petition has been passed without any iota of material and it shows non-application of mind on the part of the Detaining Authority while passing the detention order and hence, the impugned detention order is liable to be set aside.



7. In fine, the order of detention passed by the second respondent, in P.D.No.45/2019 dated 15.11.2019, is set aside and the Habeas Corpus Petition is allowed. Consequently, the detenu namely, Ananth Son Thangadurai, male, aged about 36 years who is now detained at the 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/-

Assistant Registrar(CS)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

skn

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:

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

2.The District Collector and District Magistrate
O/o District Collector and District Magistrate,
Kanyakumari District, at Nagercoil.

3.The Superintendent,
Central Prison, Palayamkottai.

4.The Joint Secretary to Government, Public (Law and order)
Fort Saint George, Chennai 9.

5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

H.C.P. (MD) No.47 of 2020

31.07.2020

db (CO)

TR(19.08.2020) 3P 6C