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H.C.P.(MD) No.227 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.08.2020

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

and

THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

H.C.P. (MD) No.227 of 2020

Subash @ Subashchandrabose

... Petitioner/Detenu

Vs.

1.The State of Tamil Nadu

rep.by The Principal Secretary to Government
Home, Prohibition and Excise Department
Fort St.George, Chennai-9.

2.The District Collector and District Magistrate
Thanjavur District, Thanjavur

3.The Inspector of Police,
Tamil University Police Station,
Thanjavur.

4.The Superintendent
Central Prison,
Tiruchirappalli

... 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 records relating to the detention order passed by the second respondent in Detention order dated 26.12.2019 in Detention order in P.D.No.51/2019, and to quash the same and direct the respondents to produce the person or body of the detenu, Subash @ Subashchandrabose, son of Suresh, aged about 22 years, before this Hon'ble Court and set him at liberty, now detained at Central Prison, Tiruchirappalli.

For Petitioner : Mr.S.Deenadhayan

For Respondents : Mr.V.Neelakandan
Additional Public Prosecutor



O R D E R

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

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

2. This habeas corpus petition has been filed by the detenu, namely, Subash @ Subashchandrabose, son of Suresh, aged 22 years, against the detention order passed by the second respondent, in P.D.No.51/2019, dated 26.12.2019, branding him as "Goonda" as contemplated under Section 2(f) of Tamil Nadu Act, 14 of 1982.

3. It is submitted by Mr.S.Deenadhayalan, learned counsel for the petitioner that though the detention order has been assailed on several grounds, it is liable to be set aside on the ground of non application of mind on the part of the Detaining Authority and failure to intimate the arrest of the detenu in the ground case. According to the learned counsel for the petitioner, the non-intimation of arrest would seriously affect the valuable rights of the detenu to make effective representation to the Authorities concerned for revocation of the detention order.

4. Per contra, Mr.V.Neelakandan, learned Additional Public Prosecutor appearing for the respondents, while reiterating the counter affidavit filed by the second respondent, would submit that the detention order has been passed by the Detaining Authority after satisfying with the materials placed by the Sponsoring Authority and there is no illegality or irregularity in the impugned detention order. Furthermore, the intimation of arrest of the detenu has been properly intimated in accordance with law and hence, the rights of the detenu has not been affected in any manner and hence, prayed for dismissal of the Habeas Corpus Petition.

5. In the instance case, a perusal of the impugned order at paragraph No.4 would show that the detenu was remanded in the ground case and he has not filed any bail petition till passing of the detention order. However, the Detaining Authority at Paragraph No.5 has stated that the detenu's father Suresh, is taking action to take out the detenu on bail by filing a bail application before the appropriate Court. After referring the similar case, it was further observed that he infers it is very likely of the detenu coming out on bail in the above case. It is evident from the impugned order that no material is available to establish that the father of the detenu is taking steps to file a



bail petition to enable the detenu to come out on bail. In our opinion, this is only an expression of the impression of the Detaining Authority and it shows non-application of mind on the part of the Detaining Authority.

6.It is seen in the booklet from Page Nos.60 to 71, the arrest of the detenu in the ground case was intimated through SMS. The contents of the SMS was also not found place in the booklet. This Court following the decision of the Hon'ble Apex Court in the case of **D.K.Basu vs. State of West Bengal**, reported in **AIR (1997) SC 610**, 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.

7.As stated above, there is no proper intimation of arrest of the detenu either to his family members or to his relatives. In the light of the above facts and circumstances, we are convinced that the impugned detention order would not stand to the scrutiny of this Court and the same is, therefore, liable to be set aside.

8. In fine, the Habeas Corpus Petition is allowed. The order of detention passed by the second respondent, in P.D.No.51/2019, dated 26.12.2019, is set aside. Consequently, the detenu, namely, Subash @ Subashchandrabose, son of Suresh, aged 22 years, who is now detained at Central Prison, Tiruchirappalli, is directed to be released forthwith unless his presence or custody or detention is required in connection with any other case / proceedings.

Sd/-

Deputy Registrar(Accounts)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

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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.



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Madurai Bench of Madras High Court,
Madurai.

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