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H.C.P.(MD) No.277 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.09.2020

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

and

THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

H.C.P. (MD) No.277 of 2020

Karthikeyan @ Appu

... Petitioner

-vs-

- 1.The Additional Chief Secretary to Government
Home, Prohibition and Excise Department
Secretariat, Chennai-600 009
 - 2.The District Collector and District Magistrate
Office of the District Collector and District Magistrate
Madurai
 - 3.The Superintendent of Prison
Madurai Central Prison
Madurai District
- ... 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 of the respondent No.2 in B.C.D.F.G.I.S.S.S.V.No.06/2020, dated 24.03.2020, and quash the same and direct the respondents to produce the body or person of the detenu by name Karthikeyan @ Appu, son of Munusamy, aged about 42 years, now confining as "Bootlegger" at Madurai Central Prison, before this Court and set him at liberty forthwith.

For Petitioner : Mr.R.Alagumani

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, Karthikeyan @ Appu, son of Munusamy, aged about 42 years, against the detention order passed by the second respondent, in B.C.D.F.G.I.S.S.S.V.No.06/2020, dated 24.03.2020, branding him as "Bootlegger" as contemplated under Section 2(b) of Tamil Nadu Act,

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



14 of 1982.

2. It is submitted by Mr.R.Alagumani, 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 that there was no proper intimation of arrest of the detenu either to his family members or his relatives. 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. Further, the learned counsel for the petitioner would submit that the habeas corpus petition in H.C.P.(MD) No.316 of 2020 filed by the co-accused in the ground case has been allowed on the same ground by this Court, vide order dated 02.09.2020.

3. Per contra, Mr.V.Neelakandan, learned Additional Public Prosecutor appearing for the respondents, while reiterating the counter affidavit filed by the second respondent, submitted 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 was given through SMS and hence, the rights of the detenu has not been affected in any manner.

4. Heard the learned counsel appearing on either side and perused the materials available on record.

5. A perusal of the arrest intimation form available at Page No.96 of the booklet shows that the arrest of the detenu in the ground case was intimated through SMS to the Cell No.8489420030. 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 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. Further, it is not disputed that this Court has also quashed the detention order passed against the co-accused in the ground case vide order dated 02.09.2020 in H.C.P.(MD) No.316 of 2020.



6. 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.

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7. In fine, the Habeas Corpus Petition is allowed. The order of detention passed by the second respondent, in B.C.D.F.G.I.S.S.S.V.No.06/2020, dated 24.03.2020, is set aside. Consequently, the detenu, namely, Karthikeyan @ Appu, son of Munusamy, aged about 42 years, who is now detained at Madurai Central Prison is directed to be released forthwith unless his presence or custody or detention is required in connection with any other case.

Sd/-

Assistant Registrar(CO)

// 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,
Secretariat, Chennai-600 009.
- 2.The District Collector and District Magistrate,
Office of the District Collector and District Magistrate,
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- 3.The Superintendent of Prison,
Madurai Central Prison,
Madurai District.



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4. The Joint Secretary to Government,
Public (Law & Order), Fort Saint George, Chennai

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

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17.09.2020

sr(CO)

TR(28.09.2020) 4P 6C