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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.09.2020

CORAM:

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

H.C.P. (MD) No.487 of 2020

Geetha

... Petitioner

-VS-

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

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

3.The Superintendent,
Central Prison,
Trichy.

4.The Inspector of Police,
Prohibition Enforcement Wings Police,
Ariyalur, Ariyalur District.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of habeas corpus calling for the records relating to the Detention Order passed by the second respondent in Crl.M.P.No.43/2020 (TPDA No.9048) dated 19.05.2020 and to quash the same and direct the respondents to produce the body or person of the detenu, Kandasamy S/o Rasu aged about 27 years, before this Court and set him at liberty, now detained at Central Prison, Trichirappalli.

For Petitioner : Mr.M.Karunanithi

For Respondents: Mr.V.Neelakandan
Additional Public Prosecutor



O R D E R

[Order of the Court was made by K.KALYANASUNDARAM, J.]

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

2. Challenging the order of detention in CrI.M.P.No.43/2020 (TPDA No.9048) dated 19.05.2020 passed by the second respondent, branding the detenu, namely, Kandasamy, Son of Rasu, male aged about 27 years, as "Bootlegger" as contemplated under Section 2(b) of the Tamil Nadu Act 14 of 1982, his wife has filed this habeas corpus petition.

3. The learned counsel for the petitioner would submit that the detention order impugned in this habeas corpus petition is liable to be set aside on two grounds. Firstly, on the ground of delay in supplying the material and booklet after lapse of 5 days. Secondly, there was no proper intimation of arrest of the detenu in the ground case. He would further submit that no details have been furnished particularly the cell number mentioned at page No.25 of the booklet, 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***.

4.Per contra, the learned Additional Public Prosecutor submitted that the Detaining Authority has arrived at the subjective satisfaction based on the cogent materials placed by the Sponsoring Authority and there is no infirmity or irregularity in the impugned order of detention passed by the second respondent. He would further submit that all the documents have been supplied to the detenu in time and the arrest of the detenu was also intimated in accordance with law and hence, prayed for dismissal of the habeas corpus petition.

5.In the matter on hand, perusal of the typed set of papers would show that the booklet and relevant documents have been furnished to the detenu on 28.05.2020, whereas, the detention order came to be passed on 19.05.2020. Section 8 of the Tamil Nadu Act 14 of 1982 mandates supplying of the copies to the detenu within 5 days. Further, a perusal of the arrest intimation form available at Page Nos.25 and 26 of the booklet shows that the arrest of the detenu in the ground case was intimated through SMS to the Cell No.8825907485. 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.



6.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.

7. In view of that, the order of detention passed by the second respondent, in CrI.M.P.No.43/2020 (TPDA No.9048) dated 19.05.2020, is set aside and the habeas corpus petition is allowed. Consequently, the detenu, namely, Kandasamy, Son of Rasu, male, aged about 27 years, who is detained at Central Prison, Trichy, 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-III)

// 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

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

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

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



3.The Superintendent,
Central Prison,
Trichy.

4.The Inspector of Police,
Prohibition Enforcement Wings Police,
Ariyalur, Ariyalur District.

5.The Joint Secretary to Government,
Public (Law & Order) Department,
Secretariat,
Chennai-9.

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

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NR (06.10.2020) 4P 7C