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H.C.P.(MD)No.579 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **03.01.2020**

CORAM:

THE HONOURABLE MR.JUSTICE **T.RAJA**

AND

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

H.C.P. (MD)No.579 of 2019

Palani, S/o.Sonai

... Petitioner

Vs.

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

2.The District Magistrate and District Collector,
District Collectorate,
Dindigul District,
Dindigul.

3.The Superintendent,
Madurai Central Prison,
Madurai.

... Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus, calling for the entire records connected with the detention order of the 2nd respondent in Detention Order No.35/2019, dated 18.06.2019, quash the same and direct the respondents to produce the petitioner's son's body and person by name Nachiappan, S/o.Palani, aged about 27 years, detained as a Goonda and lodged in Madurai Central Prison, before this Court and set him at liberty forthwith.

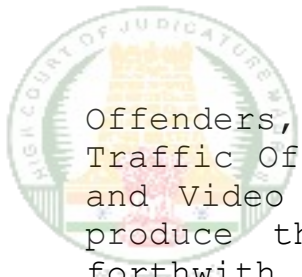
For Petitioner : Mr.R.Alagumani
for Mr.R.Venkatesan

For Respondents : Mr.K.Dinesh Babu
Additional Public Prosecutor

ORDER

[Order of the Court was made by **T.RAJA, J.**]

Palani, father of the detenu namely, Nachiappan, aged about 27 years, has come to this Court, assailing the correctness of the impugned order of detention, dated 18.06.2019, passed by the District Magistrate and District Collector, Dindigul District, second respondent herein, branding him as a Goonda, in exercise of power conferred on him under Section 3(1) of the Tamil Nadu Dangerous Activities of Bootleggers, Cyber Law



Offenders, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Sexual Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982) and to produce the detenu before this Court and set him at liberty forthwith.

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2.A perusal of the Grounds of Detention dated 18.06.2019, passed by the second respondent herein, would disclose among other things that the detenu, viz., Nachiappan came to the adverse notice in the following case:-

Sl . No .	Name of the Police Station and Crime No.	Section of Law
1.	Ammaiyanaickenur Police Station Cr.No.89 of 2019	U/s 392 r/w.397 and 506 (ii) IPC

It is further stated in the grounds of detention that the detenu was involved in a case for the commission of offences under Sections 147, 148, 294(b), 324, 302 and 506(ii) IPC in Ammaiyaickenur Police Station Crime No.90 of 2019 (ground case). The detenu was arrested in respect of both the ground case as well as the adverse case on the same day, i.e., on 07.05.2019 and produced before the Court of Judicial Magistrate, Nilakottai. The detaining authority on being satisfied with the materials placed by the sponsoring authority that the activities of the detenu are prejudicial to the maintenance of public order and public health, clamped the order of detention and making a challenge to the same, the present Habeas Corpus Petition has been filed by the petitioner.

3.We have heard Mr.R.Alagumani, learned counsel appearing for the petitioner and Mr.K.Dinesh Babu, learned Additional Public Prosecutor appearing for the respondents and perused the materials available on record.

4.Learned counsel appearing for the petitioner has drawn the attention of this Court to Page Nos.34 to 37 of the booklet, which is a Arrest Memo relating to the detenu in respect of the adverse case in Crime No.89 of 2019 and would submit that though in the Arrest Memo, it is stated that the arrest of the detenu in the adverse case in Crime No.89 of 2019 was intimated to one Petchi, wife of Kundu, there is no material placed or available to evidence that such intimation was given to the said Petchi and in the light of the non-communication of the arrest intimation, the guidelines given by the Hon'ble Apex Court in the case of **D.K. Basu v. State of West Bengal** reported in **AIR (1997) SC 610**, is violated and as such, the impugned order of detention is liable to be quashed.

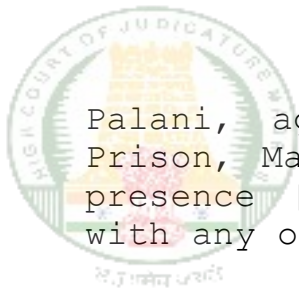


5. Though we have heard the learned Additional Public Prosecutor appearing for the respondents, we are unable to find any explanation as to why the arrest intimation was not communicated to the family members of the detenu. Further, Page No.36 of the booklet shows that the arrest was intimated to one Petchi. However, the signature of the said person has not been obtained and no other material is placed before this Court that such intimation was given to the relative of the detenu. That clearly shows that the arrest intimation was not given to the family members of the detenu, hence, the non-communication of the arrest intimation violates the guidelines given by the Hon'ble Apex Court reported in **AIR (1997) SC 610 [D.K. Basu v. State of West Bengal]** and as such, the impugned order of detention is liable to be set aside.

6. The Hon'ble Apex Court in **Rekha v. State of T.N.** reported in **(2011) 5 SCC 244** has ruled that the preventive detention is, by nature repugnant to democratic ideas and an anathema to the rule of law. No such law exists in the USA and in England (except during war time). It may be mentioned herein that in cases of preventive detention no offence is proved and the justification of such detention is suspicion or reasonable probability, and there is no conviction, which can only be warranted by legal evidence. When the detaining authority passes the order of detention on subjective satisfaction, as per clause (3) of Article 22 the detenu is not entitled to a lawyer or the right to be produced before a Magistrate within 24 hours of arrest. Such Article excludes the applicability of clauses (1) and (2). However, to prevent misuse of this potentially dangerous power the law of preventive detention has to be strictly construed and meticulous compliance with the procedural safeguards, however technical, is, in our opinion, mandatory and vital.

7. The exclusion of applicability of clauses (1) and (2) of Article 22 does not mean that the arrest of detenu should not be informed to his family members, which is *sine qua non*, therefore, the non-compliance would vitiate the very detention itself. Applying this ratio here, we hold that the non-compliance of the mandatory condition that the family members of the detenu should be informed of his arrest having not been done in this case, would vitiate the very detention itself. Accordingly, on this sole ground, the detention order is liable to fall.

8. In the result, the Habeas Corpus Petition is allowed by setting aside the Order of Detention passed by the second respondent herein, namely, the District Magistrate and District Collector, Dindigul District, in Detention Order No.35/2019 dated 18.06.2019. Consequently, the detenu, namely, Nachiappan, son of



Palani, aged about 27 years, who is now detained at Central Prison, Madurai, is directed to be released forthwith unless his presence [or] custody [or] detention is required in connection with any other case/proceedings.

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Sd/-

Assistant Registrar (CO)

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Sub Assistant Registrar (CS)

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To

- 1.The Principal Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai - 600 009.
- 2.The District Magistrate and District Collector,
District Collectorate,
Dindigul District,
Dindigul.
- 3.The Superintendent,
Madurai Central Prison,
Madurai.
- 4.The Superintendent,
Madurai Central Prison,
Madurai.
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

H.C.P. (MD)No.579 of 2019
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