



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.11.2020

CORAM:

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

H.C.P. (MD) No.588 of 2020

Kamalya ... Petitioner/wife of the detenu

-vs-

- 1.The Additional Chief Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise Department
Fort St.George, Chennai-600 009
- 2.The District Collector and District Magistrate
O/o.The District Collector and District Magistrate
Nagapattinam District, Nagapattinam.
- 3.The Superintendent of Prison,
Trichy Central Prison, Trichy 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 second respondent in C.O.C.No.29 of 2020, dated 18.07.2020 and to quash the same and to direct the respondents to produce the body or person of the detenu by name Sivapandi, son of Tamilselvam, aged about 34 years, now confining at Trichy Central Prison before this Court and set him at liberty forthwith.

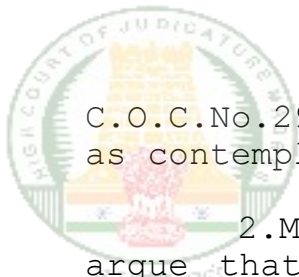
For Petitioner: Mr.R.Alagumani

For Respondents: Mr.R.Anandharaj,
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 wife of the detenu, namely, Sivapandi, son of Tamilselvam, aged 34 years, against the detention order passed by the second respondent, in



C.O.C.No.29 of 2020, dated 18.07.2020, branding him as "Boot-Legger" as contemplated under Section 2(b) of Tamil Nadu Act, 14 of 1982.

2.Mr.R.Alagumani, learned counsel for the Petitioner would argue that though several grounds have been raised to assail the impugned Detention Order, he is entitled to succeed on two grounds. Firstly, on the ground of violation of Section 8 of Act 14 of 1982 and secondly on the ground that the arrest of the detenu was not intimated either to his family members or to his relatives which deprived the valuable right of the detenu from making representation to revocation of the detention order. In this regard, the learned counsel has relied on Page No.46 and 47 of the Booklet furnished to the detenu.

3.Mr.R.Anandharaj, learned Additional Public Prosecutor appearing for the respondents would submit that the detention order has been passed after taking note of the antecedents of the detenu involving in similar nature of offence. It is further contended that the second respondent only after having satisfied with the materials furnished by the sponsoring Authority, has rightly passed the detention order only to prevent the detenu from indulging in similar offence in future and to prevent him from causing disturbance to the general public at large. According to the learned Additional Public Prosecutor, there is no violation of any law warranting interference of this Court.

4.A perusal of the record would reveal that admittedly, the detention order came to be passed on 18.7.2020, but the booklet and the relevant materials have been furnished to the detenu on 30.7.2020. Section 8 of the above Act is very clear that all the relevant materials have to be furnished to the detenu within a period of five days. But indisputably, in the case on hand, only after a lapse of 12 days, the relevant materials have been furnished to the detenu. Therefore, we find some force in the contention of the learned counsel for the Petitioner that there is violation of Section 8 of the Act.

5.The Arrest Intimation Form annexed at Page No.46 shows that the arrest of the detenu was intimated only through SMS to the Cell No.9786393190. 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.



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 C.O.C.No.29/2020, dated 18.07.2020 is set aside. Consequently, the detenu, namely, Sivapandi, son of Tamilselvam, aged 34 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/-

Assistant Registrar (CO)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

vsn

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,
State of Tamil Nadu,
Home, Prohibition and Excise Department
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- 2.The District Collector and District Magistrate
O/o.The District Collector and District Magistrate
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- 3.The Superintendent of Prison,
Trichy Central Prison, Trichy District.



4.The Joint Secretary to Government,
Public(Law & Order),
Fort Saint George, Chennai-9.

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

H.C.P. (MD) No.588 of 2020

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SGS (CO)
NR (27/11/2020) 4P : 6C