



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

and

THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

H.C.P. (MD) No.781 of 2020

Anusiya ... Petitioner/Wife of the detenue
-vs-

1.State of Tamil Nadu,
Rep. by the Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai - 9.

2.The District Collector and District Magistrate,
O/o The District Collector and District Magistrate,
Nagapattinam District,
Nagapattinam.

3.The Superintendent,
Central Prison, Tiruchirappalli. ... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of habeas corpus calling for the entire records in detention order passed in C.O.C.No.45/2020 dated 01.09.2020 on the file of the 2nd respondent herein and set aside the same as illegal and direct the respondents to produce the body or person of the petitioner's husband namely, Rajesh @ Mathavan, S/o Rajendran, male, aged 29 years, who is detained in Central Prison, Tiruchirappalli before this Court and set him at liberty.

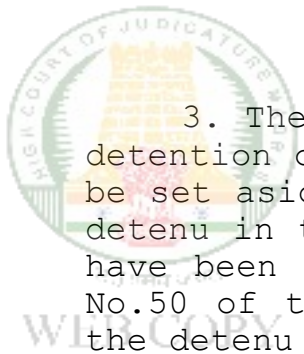
For Petitioner : Mr.K.A.S.Prabhu
For Respondents : Mr.K.Dinesh Babu
Additional Public Prosecutor

O R D E R

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

Heard Mr.K.A.S.Prabhu, learned counsel for the petitioner and Mr.K.Dinesh Babu, learned Additional Public Prosecutor for the respondents and perused the materials available on record.

2.Challenging the order of detention in C.O.C.No.45/2020 dated 01.09.2020 passed by the second respondent, branding the detenu, namely, Rajesh @ Mathavan, male, aged about 29 years S/o Rajendran, as "Boot-Legger" 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, since 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.50 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, while reiterating the counter affidavit filed by the second respondent, submitted that the Detaining Authority has arrived at the subjective satisfaction based on the cogent and relevant materials placed by the Sponsoring Authority and there is no infirmity or irregularity in the impugned order of detention passed by the second respondent and hence, prayed for dismissal of the habeas corpus petition.

5. Perusal of the arrest intimation form available at Page No.50 of the booklet shows that the arrest of the detenu in the ground case was intimated through SMS to the Cell No.8270973630. 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 C.O.C.No.45/2020 dated 01.09.2020, is set aside and the habeas corpus petition is allowed. Consequently, the detenu, namely, Rajesh @ Mathavan, son of Rajendran, male aged about 29 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 ()

// True Copy //

/ /2021

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 - 9.
- 2.The District Collector and District Magistrate,
O/o The District Collector and District Magistrate,
Nagapattinam District,
Nagapattinam.
- 3.The Superintendent,
Central Prison,
Tiruchirappalli.
- 4.The Joint Secretary to Government,
Public (Law & Order) Fort St. George, Chennai-9
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

H.C.P. (MD) No.781 of 2020

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VB (08.01.2021) 3P 6C