



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

and

THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

H.C.P. (MD) No.799 of 2020

Anjammal

... Petitioner/Mother 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, Tiruchy 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.39 of 2020, dated 22.8.2020 and to quash the same and to direct the respondents to produce the body or person of the detenu by name Ajithkumar, son of Shanmugam, aged about 23 years, now confining at Trichy Central Prison before this Court and set him at liberty forthwith.

For Petitioner : Mr.R.Alagumani

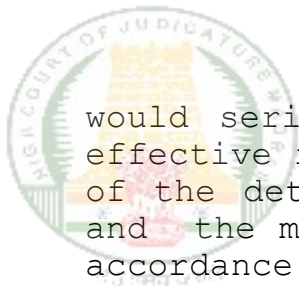
For Respondents : Mr.K.Dinesh Babu,
Additional Public Prosecutor

O R D E R

(Order of the Court was made by K.KALYANASUNDARAM, J.)

This habeas corpus petition has been filed by the mother of the detenu, namely, Ajithkumar, son of Shanmugam, aged about 23 years against the detention order passed by the second respondent, in C.O.C.No.39 of 2020, dated 22.8.2020, branding him as "Goonda" as contemplated under Section 2(f) of Tamil Nadu Act, 14 of 1982.

2. It is submitted by Mr.R.Alagumani, learned counsel appearing for the petitioner that the detention order has been assailed on two grounds, firstly, the detention order is liable to be set aside on the ground of non-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. Secondly, on the ground that the booklet and the material documents have not been supplied to the detenu in accordance with Section 8 of the Act.

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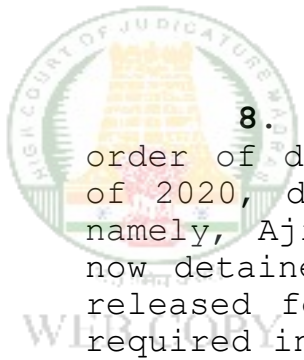
3. Per contra, Mr.K.Dinesh Babu, learned Additional Public Prosecutor appearing for the respondents, would submit that the detention order has been passed by the Detaining Authority after satisfying with the materials placed by the Sponsoring Authority and there is no illegality or irregularity in the 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. It is the further submission of the learned Additional Public Prosecutor that the provisions of the relevant Act has been strictly followed by the Detaining Authority and there is no lapse on his part at the time of passing the Detention Order.

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.33 of the booklet shows that the arrest of the detenu in the ground case was intimated through SMS to the Cell No.9715045847. 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. Further, from the perusal of the records, it is seen that the detenu was arrested in Crime No.1394 of 2020 on the file of Nagore Police Station on 7.7.2020 for the offence under Section 302. The Detention Order came to be passed on 22.08.2020 and the booklet and other relevant materials were admittedly served to the detenu only on 29.08.2020. Section 8 of the Act stipulates that materials have to be served on the detenu within a period of five days, however, in this case, the materials have been served to the detenu only after a lapse of 7 days.

7. 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 on the above said grounds.



8. In fine, the Habeas Corpus Petition is allowed. The order of detention passed by the second respondent, in C.O.C.No.39 of 2020, dated 22.8.2020 is set aside. Consequently, the detenu, namely, Ajithkumar, son of Shanmugam, aged about 23 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 ()

// True Copy //

/ /2021

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,
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- 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, Tiruchit District.
4. The Joint Secretary to Government,
Public (Law & Order) Fort St.Goerge,
Chennai 600 009.
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

H.C.P. (MD) No.799 of 2020
21.12.2020

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