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**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

DATED : 22.01.2020

CORAM

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

**AND**

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

**H.C.P(MD)Nos.892 and 894 of 2019**

Selvi

... Petitioner in both H.C.Ps

Vs.

1.The Additional Chief Secretary to Government,  
State of Tamil Nadu,  
Home, Prohibition & Excise Department,  
Fort St. George,  
Chennai - 600 009.

2.The District Collector and District Magistrate,  
Office of the District Collector and District Magistrate,  
Tiruchirapalli District,  
Tiruchirapalli.

3.The Superintendent of Prison,  
Tiruchirapalli Central Prison,  
Tiruchirapalli District.

... Respondents in both H.C.Ps

**Prayer in H.C.P.(MD).No.892/2019:** Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Habeas Corpus to calling for the entire records connected with the detention order of the respondent No.2 in Cr.M.P.No.37 of 2019 dated 25.07.2019 and quash the same and direct the respondents to produce the body or person of the detenu namely Vasanth, Son of Jeeva, aged about 27 years, now detained at Tiruchirapalli Central Prison before this Hon'ble Court and to set him at liberty forthwith.

**Prayer in H.C.P.(MD).No.894/2019:** Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Habeas Corpus to calling for the entire records connected with the detention order of the respondent No.2 in Cr.M.P.No.36 of 2019 dated 25.07.2019 and quash the same and direct the respondents to produce the body or person of the detenu namely Murali, Son of Jeeva, aged about 29 years, now detained at Tiruchirapalli Central Prison before this Hon'ble Court and to set him at liberty forthwith.

For Petitioner : Mr.V.Gopinath

For Respondents : Mr.K.Dinesh Babu

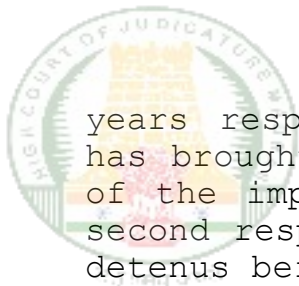
Additional Public Prosecutor  
(in both petitions)

\* \* \* \* \*

**COMMON ORDER**

(Order of the Court was made by **T.RAJA, J.**)

The petitioner being the mother of the detenus namely Vasanth, and Murali, Sons of Jeeva, aged about 27 years and 29



years respectively, now detained at Tiruchirapalli Central Prison has brought these habeas corpus petitions assailing the correctness of the impugned detention orders, dated 25.07.2019, passed by the second respondent and also to direct the respondents to produce the detenus before this Court and to set them at liberty forthwith.

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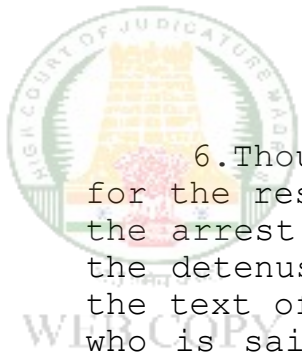
2.Learned counsel appearing for the petitioner in both petitions is assailing the impugned detention orders on the ground that when the detenus are the owners of the vehicle and said to have taken sand through their driver of the lorry on 19.07.2019, the respondents 2 and 3 have arrested and detained them under the Goondas Act, branding them as 'Sand Offender', the arrest information has not been furnished to any one of the family members. According to the learned counsel, on this ground alone, the impugned detention orders are vitiated and the same are liable to be quashed.

3.We have heard Mr.V.Gopinath, 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.Arguing further, the learned counsel appearing for the petitioner drawing our attention to page Nos.19 and 13 of the booklet submitted that after the arrest of the detenus, the arrest intimation was not communicated to the family members of the detenus and as claimed by the respondent, if arrest intimation has been furnished, there is no proof of arrest intimation and besides the signature of the concerned person has also not been obtained, therefore, in the light of the non-communication of the arrest intimation, to the family members of the detenus the mandatory guidelines given by the Hon'ble Apex Court reported in **AIR (1997) SC 610 [D.K. Basu v. State of West Bengal]** is violated and as such, the impugned orders of detention are liable to be quashed.

5.In support of his submission, the learned counsel appearing for the petitioner has relied on an unreported order of this Court **dated 07.06.2019 made in H.C.P. (MD) No.26 of 2019** in the matter of **Natarajan v. State of Tamil Nadu, rep. by The Principal Secretary to Government and two others**, in which one of us (B.PUGALENDHI, J) was a party. The relevant portion of the order runs thus:-

"8.As rightly pointed out by the learned counsel appearing for the petitioner, perusal of page No.20 of the booklet would disclose that though the arrest intimation was given to his wife/Kavitha through mobile No.8012668200, neither the text of the intimation given nor the signature of the person, has been found place, hence the same is in violation of **D.K. Basu v. State of West Bengal** reported in **AIR (1997) SC 610** and hence, on the sole ground, the impugned order of detention is liable to be quashed."



6. Though we have heard the learned Additional Public Prosecutor 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 detenus. Further, page nos. 19 & 13 of the booklet shows neither the text of the intimation is given nor the signature of the person, who is said to have been informed has been obtained. That clearly shows that the arrest intimation was not given to the family members of the detenus, 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 orders of detention are liable to be set aside.

7. 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.

8. 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 detenus should be informed of their 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.

9. In the result, the Habeas Corpus Petitions are allowed by setting aside the orders of detention passed by the second respondent herein, namely, the District Collector, Tiruchirappalli District, Tiruchirappalli, in Cr.M.P.Nos.37 and 36 of 2019 dated 25.07.2019. Consequently, the detenus, namely, Vasanth and Muruli, Sons of Jeeva, aged about 27 years and 29 years, now detained at Tiruchirappalli Central Prison are directed to be released forthwith



unless their presence [or] custody [or] detention is required in connection with any other case/proceedings.

Sd/-

Assistant Registrar (Records)

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/ /2020

Sub Assistant Registrar(CS)

vs

To

- 1.The Additional Chief Secretary to Government,  
State of Tamil Nadu,  
Home, Prohibition & Excise Department,  
Fort St. George,  
Chennai - 600 009.
  - 2.The District Collector and District Magistrate,  
Office of the District Collector and District Magistrate,  
Tiruchirapalli District,  
Tiruchirapalli.
  - 3.The Joint Secretary to Government,  
Public Department, Chennai 600 009.
  - 3.The Superintendent of Prison,  
Central Prison,  
Tiruchirapalli District.
  - 4.The Additional Public Prosecutor,  
Madurai Bench of Madras High Court,  
Madurai.
  - 5.The Additional Public Prosecutor,  
Madurai Bench of Madras High Court,  
Madurai.
- +2 CC to M/s.R.KARUNANIDHI, Advocate ( SR-2502[F], SR-2503[F] )

H.C.P (MD) No. 892 and 894 of 2019

22.01.2020

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