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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.01.2020

CORAM:

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

AND

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

H.C.P. (MD) No.856 of 2019

Sigapayee

: Petitioner

Vs

1.The State of Tamil Nadu rep. by
Additional Chief Secretary to Government
Home, Prohibition & Excise (XVI) Department,
Fort St. George,
Chennai-09.

2.The District Magistrate & District Collector,
Office of the District Magistrate & District Collector,
Pudukkottai District,
Pudukkottai.

3.The Superintendent,
Central Prison,
Tiruchirappalli District.

: Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus, calling for the entire records in detention order passed in P.D.O.No.23/2019 dated 26.07.2019 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 son Sannasi @ Sannasi Pandian, S/o.Thavasi, male, aged about 29 years, who is now detained at Central Prison, Trichirappalli before this Court and set him at liberty forthwith.

For Petitioner : Mr.K.G.Arunkumar

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

**ORDER**

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

The petitioner Mrs.Sigapayee/wife of the detenu namely Sannasi Pandian S/o. Thavasi, male, aged about 29 years has come to this Court with this Habeas Corpus Petition, challenging the correctness of the impugned detention order dated 26.07.2019 passed by the second respondent/District Collector and District Magistrate, Thanjavur District, branding the petitioner's husband as 'Goonda'.

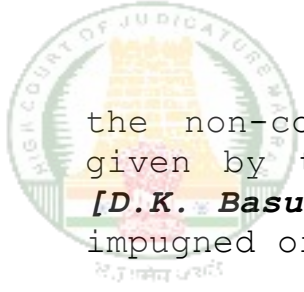
2.A perusal of the Grounds of Detention dated 26.07.2019, passed by the 2nd respondent herein, would disclose among other things that the detenu, viz., Sannasi Pandian came to the adverse notice in the following case:-

Sl. No.	Name of the Police Station and Crime No.	Section of Law
1.	Thirugokarnam Police Station Cr.No.116 of 2019	U/s 399 I.P.C

It is further stated in the grounds of detention that the detenu was involved in a case for the commission of offences under Section 3(1) of Tamil Nadu Act, 14 of 1982 in Thirugokarnam Police Station Crime No.113 of 2019 (ground case). The detenu was arrested on 12.07.2019 and produced before the Court of Judicial Magistrate No.II, Pudukkottai. 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.K.G.Arun Kumar, 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 No.117 of the booklet and would submit that after the arrest of the accused in ground case in Crime No.113 of 2019, the arrest intimation was not communicated to the family members of the detenu and though the arrest intimation was said to have been sent to the mobile No.9095893386 through SMS, the person to whom the message was sent to the said mobile number has not been identified and the signature of the concerned person has also not been obtained and in the light of



the non-communication of the arrest intimation, the 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 order of detention is 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 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.117 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 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.

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 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.

9. 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 Collector and District Magistrate, Pudukkottai District in P.D.O.No.23/2019 dated 26.07.2019. Consequently, the detenu, namely, Sannasi @ Sannasi Pandian, S/o.Thavasi, male, aged about 29 years, who is now detained at Central Prison, Trichirappalli 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(AS)

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/ /2020

Sub Assistant Registrar(CS)

vs

To

1. The Additional Chief Secretary to Government
Home, Prohibition & Excise (XVI) Department,
Fort St. George,
Chennai-09.

2. The District Magistrate & District Collector,
Office of the District Magistrate & District Collector,
Pudukkottai District,
Pudukkottai.



3. The Superintendent,
Central Prison,
Tiruchirappalli District.

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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. 856 of 2019
08.01.2020

KG(CO)
TR(04.02.2020) 5P 6C