



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : **06.02.2020**
CORAM:

THE HONOURABLE MR.JUSTICE T.RAJA
and

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

H.C.P. (MD) No.899 of 2019

Jeyabal

... Petitioner

versus

1. State of Tamil Nadu,
Rep. by its Secretary to Government,
Government of Tamil Nadu,
Home, Prohibition & Excise Department,
Chennai - 9.

2. The District Collector and District Magistrate,
Dindigul District,
Dindigul.

3. The Superintendent,
Central Prison,
Madurai.

... Respondents

Habeas Corpus Petition filed under Article 226 of the Constitution of India, for the issuance of writ of Habeas Corpus, to call for the records pertaining to the proceedings of the 2nd respondent made in his proceedings in Detention Order No.45/2019 dated 03.08.2019 and quash the same and set the petitioner's father by name, Muthan, S/o.Ponnaiah Thevar, aged about 63 years at liberty from Central Prison, Madurai.

For Petitioner : M/s.M.Jegadeesh Pandian
For Respondents : Mr.K.Dinesh Babu,
Additional Public Prosecutor

ORDER

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

The petitioner is the son of the detenu viz., Muthan, S/o.Ponnaiah Thevar, aged about 63 years. The detenu has been detained, as per the order of the second respondent, dated 03.08.2019, under Section 2(e) of the Tamil Nadu Act 14 of 1982, branding him as "Drug Offender". Challenging the same, the petitioner is before this Court in this Habeas Corpus Petition.



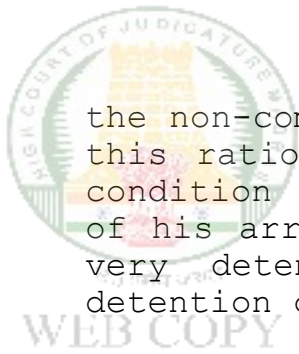
2. Mr.M.Jegadeesh Pandian, learned counsel appearing for the petitioner submitted that the detenu suffered one adverse case registered in Cr.No.95/2018 by Oddanchatram Police Station for the offences under Sections 8(c) r/w. 20(b)(ii)(A) Narcotic Drugs and Psychotropic Substances Act, 1985, since he was in possession of 0.800 gram of dry ganja. The detenu also suffered yet another case registered by Oddanchatram Police Station in Cr.No.308/2019 for the offences under Sections 8(c) r/w. 20(b)(ii)(B) Narcotic Drugs and Psychotropic Substances Act, 1985. The learned counsel, by relying upon page Nos.37 and 38 of the booklet, submitted that the arrest intimation of the detenu in the ground case has not been informed either to the detenu or in any of the family members, that would vitiate the detention order passed by the second respondent.

3. Heard the learned Additional Public Prosecutor appearing for the respondents.

4. A perusal of arrest memo available at page Nos.37 and 38 of the booklet shows that neither the text of the intimation is given nor the signature of the person, who is said to have been informed has been obtained, but the same was intimated through SMS in Cell No.9750779987. 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.

5. 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.

6. 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.

7.In the result, the Habeas Corpus Petition is allowed by setting aside the Order of Detention passed by the second respondent herein, namely, District Collector and District Magistrate, Dindigul District, in Detention Order No.45/2019 dated 03.08.2019. Consequently, the detenu, namely, Muthan, S/o. Ponnaiah Thevar, aged about 63 years, who is now detained at Central Prison, Madurai, 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)

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To

1. The Secretary to Government,
Government of Tamil Nadu,
Home, Prohibition & Excise Department,
Chennai - 9.
2. The District Collector and District Magistrate,
Dindigul District,
Dindigul.
3. The Superintendent,
Central Prison,
Madurai.
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai

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MK (12.03.2020) 3P 5C