



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.02.2020

CORAM:

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

AND

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

H.C.P. (MD)No.896 of 2019

WEB COPY

K.Gayathri

... Petitioner

Vs.

1.State of Tamil Nadu,

Rep. by the Principal Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat
Chennai - 600 009.

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

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus, calling for the records connected with the detention order of the 2nd respondent in C.O.C.No.34/2019, dated 15.08.2019, quash the same as illegal and direct the respondents to produce the body or person of the petitioner's husband namely, Karunakaran, aged about 33 years, S/o.Jayaraman, now detained at Central Prison, Tiruchirappalli, before this Court and set him at liberty forthwith.

For Petitioner : Mr.K.A.S.Prabhu

For Respondents : Mr.K.Dinesh Babu

Additional Public Prosecutor

ORDER

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

The petitioner is the wife of the detenu and challenging the correctness of the impugned order of detention dated 15.08.2019, passed by the second respondent, under Section 3(1) of Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Cyber Law Offenders, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Sexual Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982) and branding him as 'Boot-Legger' in C.O.C.No.34/2019, came forward to file the present Habeas Corpus Petition.



2.A perusal of the Grounds of Detention dated 15.08.2019, passed by the second respondent herein, would disclose among other things that the detenu viz., Karunakaran came to the adverse notice in the following cases:-

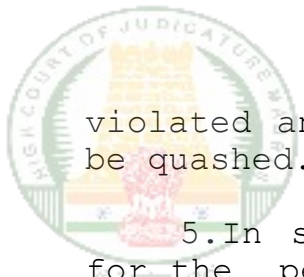
Sl No	Name of the Police Station and Crime No.	Section of Law
1.	Mayiladuthurai Prohibition and Enforcement Wing Crime No.4/2019	U/s. 4(1)(aaa) r/w 4(1-A) of Tamil Nadu Prohibition Act, 1937 (Transport).
2.	Mayiladuthurai Prohibition and Enforcement Wing Crime No.114/2019	U/s. 4(1)(aaa) of Tamil Nadu Prohibition Act, 1937.
3.	Mayiladuthurai Police Station Crime No.253/2019	U/s. 4(1)(aaa) r/w 4(1-A) of Tamil Nadu Prohibition Act, 1937.

It is further stated in the grounds of detention that the detenu was involved in a case for the commission of offence under Section 4(1)(aaa) r/w. 4(1-A) of the Tamil Nadu Prohibition Act, 1937 (Transport) in Mayiladuthurai Prohibition Enforcement Wing Crime No.415 of 2019 (ground case). The detenu was arrested on 17.07.2019 and produced before the learned Principal District Munsif, Mayiladuthurai (Full Additional Charge), Judicial Magistrate Court No.I, Mayiladuthurai. 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.A.S.Prabhu, 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 Nos.51 and 52 of the booklet and would submit that after the arrest of the accused in ground case in Crime No.415 of 2019, though the arrest intimation was alleged to have been communicated to the petitioner, wife of the detenu and also the same was sent to the Mobile No.9943931134 through SMS, neither the person to whom the message was sent to the said mobile number has been identified nor the signature of the persons has been obtained and in the light of the non-communication of the arrest intimation, the guidelines given by the Hon'ble Apex Court reported

<https://hcservices.hccourts.gov.in/hcservices> 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 Mr.K.Dinesh Babu, 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.52 of the booklet shows that the arrest intimation was given to the petitioner, wife of the detenu, but her signature has not been obtained. There is no proof thereon. 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, Nagapattinam District, in C.O.C.No.34/2019, dated 15.08.2019. Consequently, the detenu, namely, Karunakaran, aged about 33 years, son of Jayaraman, now 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/proceedings.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

smn2

To

- 1.The Principal Secretary to Government of Tamil Nadu,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 600 009.
- 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 and Order),
Fort St. George, Chennai.
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

H.C.P. (MD) No. 896 of 2019
13.02.2020

SMA/03/03/2020/4P/6C

<https://hcservices.ecourts.gov.in/hcservices/>