



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.02.2020

CORAM:

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

AND

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

H.C.P. (MD) No.898 of 2019

M.Murugeswari

...

Petitioner/wife of the detenu

Vs

1.State of Tamil Nadu rep. by

The Principal Secretary to Government
Home, Prohibition & Excise Department,
Secretariat,
Chennai-09.

2.The District Collector & District Magistrate,
Office of the District Collector & 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 entire records in detention order passed in C.O.C.No.33/2019, dated 10.08.2019 on the file of the respondent No.2 herein and set aside the same as illegal and direct the respondents to produce the body or person of the petitioner's husband namely Munis @ Muniswaran, S/o.Soundararajan, male, aged about 38 years, who is detained in Central Prison, Tiruchirappalli before this Court and set him at liberty.

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

For Respondents : Mr.K.Dinesh Babu

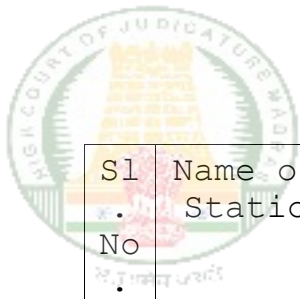
Addl.Public Prosecutor

ORDER

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

Mrs.Murugeswari, wife of the detenu viz., Munis @ Muniswaran, has filed this petition, challenging the legality of the impugned detention order passed by the second respondent in C.O.C.No.33/2019, dated 10.08.2019

2.A perusal of the Grounds of Detention dated 10.08.2019, passed by the 2nd respondent herein, would disclose among other things that the detenu, viz., Munis @ Muniswaran came to the adverse notice in the following case:-



Sl No.	Name of the Police Station and Crime No.	Section of Law
1.	Nagappattinam Town Police Station Cr.No.23/2019	U/s 341, 302 I.P.C @ into 341, 302, 147, 148 of I.P.C

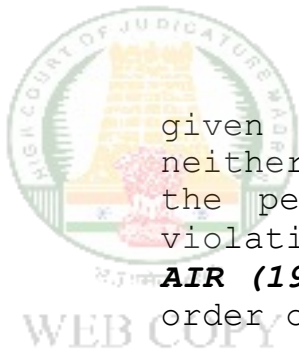
It is further stated in the grounds of detention that the detenu has involved in a case for the commission of offence punishable under Section 386 of I.P.C @ 397 r/w 392 I.P.C in Nagappattinam Town Police Station Cr.No.161/2019 (ground case). In this regard, the detenu was arrested and remanded in judicial custody on 18.07.2019 before the Judicial Magistrate No.I, Nagapattinam and from the said ground case, later, he was acquitted by the trial Court by an order dated 02.12.2019. 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, 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 drawing our attention to page No.61 of the booklet submitted that after the arrest of the detenu in ground case in Crime No.161 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.7402682491 through SMS, the person to whom the message was sent to the said mobile number has not been identified 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 detenu 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 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



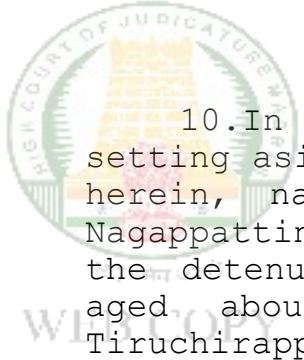
given to his wife/Kavitha through mobile No.8012668200, neither the text of the intimation given nor the signature of the person, has been found place, hence the same is in violation of **D.K. Basu v. State of West Bengal** reported in **AIR (1997) SC 610** and hence, on the sole ground, the impugned order of detention is liable to be quashed."

6.In reply, learned Additional Public Prosecutor submitted that, according to the submission made by the petitioner, in the ground case, the trial court acquitted the detenu by order dated 02.12.2019. Insofar as furnishing the arrest intimation in the ground case is concerned, he submitted that SMS has been given to the petitioner/wife of the detenu.

7.But, on a perusal of page No.61 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.

8.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.

9.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. Further, taking into consideration of the acquittal of the detenu in the ground case, we are of the view that the detention order is liable to fall.



10. 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, Nagappattinam District, Nagappattinam, in C.O.C.No.33/2019, dated 10.08.2019. Consequently, the detenu, namely, Munis @ Muniswaran, S/o.Soundararajan, male, aged about 38 years, who is detained in 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 (AD-I)

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/ /2020

Sub Assistant Registrar(CS)

vs

- 1.The Principal Secretary to Government
State of TamilNadu
Home, Prohibition & Excise Department,
Fort St. George, Chennai-09.
- 2.The District Collector & District Magistrate,
O/o.The District Magistrate and District Collector,
Nagapattinam District
Nagapattinam.
- 3.The Superintendent of Prison
Trichy Central Prison,
Trichy District.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
- 5.The Joint Secretary to Govt.,
Public (Law & Order)
Fort Saint George, Chennai -9

H.C.P. (MD) No.898 of 2019
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SMA/11/03/2020/4P/6C