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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)No.967 of 2019

Ameenammal, S/o.Abdul Kalam ... Petitioner / Mother of the
detenu

Vs.

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

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

3.The Superintendent,
Trichy Central Prison,
Trichy 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 connected with the detention order of the 2nd respondent in P.D.O.No.50/2019, dated 04.09.2019, quash the same and direct the respondents to produce the body or person of the detenu, by name Musthafa @ Hameen Musthafa, S/o.Abdul Kalam, aged about 23 years, now detained as 'Goonda' in Trichy Central Prison, before this Court and set him at liberty forthwith.

For Petitioner : Mr.R.Alagumani

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

ORDER

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

The petitioner is the mother of the detenu and challenging the correctness of the impugned order of detention dated 04.09.2019, 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

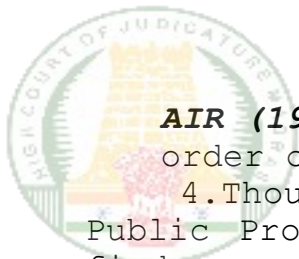


branding him as 'Goonda' in P.D.O.No.50/2019, came forward to file the present Habeas Corpus Petition.

2.Mr.R.Alagumani, learned counsel appearing for the petitioner attacking the impugned detention order, argued that the detenu cannot be branded as a 'Goonda', for more than one reason. Firstly, there was only one solitary case registered against him in Alangudi Police Station in Crime No.118 of 2019 for the alleged offences under Sections 147, 148, 341, 294(b), 324, 506(ii) and 307 IPC and consequently, he was arrested and remanded to judicial custody, as there is no adverse antecedents against him. Based on the solitary case alone, it is not open to the Detaining Authority to pass the impugned detention order. Taking up the second ground, the learned counsel appearing for the petitioner has drawn the attention of this Court to Page Nos.48 and 49 of the booklet and would submit that after the arrest of the detenu in ground case in Crime No.118 of 2019, though the arrest intimation was alleged to have been communicated to Abdul Kalam, father of the detenu and also the same was sent to the Mobile No.9962861412 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 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. Thirdly, a co-detenu viz., Abbas, S/o.Habeeb Mohamed, aged 30 years, has also raised similar plea before this Court in H.C.P.(MD)No.742 of 2019 and this Court, vide order dated 07.01.2020, agreeing with the fact that neither the text of the arrest intimation was given to any one of the family members of the detenu nor the signature of the person, who is said to have been informed about the arrest of the detenu has been obtained, quashed the detention order. In the present case also, where the arrest intimation of the detenu was not even given or furnished to any one of the family members of the detenu, therefore, the impugned detention order stands vitiated and the same is liable to be quashed.

3.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.''

4. 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.49 of the booklet shows that the arrest intimation was given to Abdul Kalam, father of the detenu, but his 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.

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, the District Magistrate and District Collector, Pudukkottai District, in P.D.O.No.50/2019, dated 04.09.2019. Consequently, the detenu, namely, Musthafa @ Hameen Musthafa, son of Abdul Kalam, aged about 23 years, who is now detained at 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 (Records)

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/ /2020

Sub Assistant Registrar(CS)

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To

- 1.The Additional Chief Secretary to Government of Tamil Nadu,
Home, Prohibition and Excise Department,
Fort St. George,
Chennai - 600 009.
- 2.The District Magistrate and District Collector,
Pudukkottai District,
Pudukkottai.
- 3.The Superintendent,
Trichy Central Prison,
Trichy District.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

H.C.P. (MD) No. 967 of 2019
22.01.2020

KK/SAR/14.02.2020/4P-5C/