



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.1042 of 2019

Ramalakshmi ... Petitioner/Wife of detenu

Vs

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

2.The District Collector & District Magistrate,
Thanjavur District
Thanjavur.

3.The Superintendent of Prison
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 pertaining to the impugned detention order passed by the respondent No.2 made in his proceedings in P.D.No.18/2019 dated 02.10.2019 and quash the same and direct the respondents to produce the detenu namely Karunanithi @ Kalaignar, S/o.Subramanian, male, aged about 45 years, who is detained in Central Prison, Tiruchirappalli before this Court and set him at liberty.

For Petitioner : Mr.K.M.Karunakaran
for Mr.O.S.Thilak Pasumbadiyar

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

O R D E R

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

Mrs.Ramalakshmi, wife of the detenu viz., Karunanithi @ Kalaignar, has filed this petition, challenging the legality of the impugned detention order passed by the second respondent in



P.D.No.18/2019 dated 02.10.2019.

2.Mr.K.M.Karunakaran, learned counsel appearing for the petitioner placed before us two fold submissions. Firstly, it was pleaded that when the detenu was facing one ground case and one adverse case, the arrest intimation of the detenu in the ground case was not furnished to either the detenu or to any one of his family members. In support of his submission, drawing our notice to page No.22 of the booklet, he submitted that when the aforesaid arrest intimation has not been substantiated, by way of obtaining either the signature of the detenu or any one of his family members, it is clear that arrest intimation in the ground case was not furnished to the petitioner's family. Therefore, in the light of the non-communication of the arrest intimation, to the family members of the detenu, according to him, the mandatory guidelines given by the Hon'ble Apex Court reported in **AIR (1997) SC 610 [D.K. Basu v. State of West Bengal]** are violated and as such, the impugned order of detention 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 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.22 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.

5. Heard both sides and perused the materials available on record.

6. It is well-settled by this Court that the arrest intimation should be made known to either the detenu or the family members. In the present case, although the respondents have claimed that SMS in respect of his arrest in the ground case has been informed to the family members, there is no evidence to show that the arrest information has been passed on or furnished to the family members of the detenu.

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. Accordingly, the impugned detention order passed by the second respondent in P.D.No.18/2019 dated 02.10.2019 is quashed. Consequently, this petition is allowed and the respondents are directed to release the detenu namely Karunanithi @ Kalaaignar, S/o. Subramanian, male, aged about 45 years, who is detained in Central Prison, Tiruchirappalli and set him at liberty. The Superintendent of Central Prison, Tiruchirappalli/third respondent is directed to release him



forthwith, unless his presence is required in connection with any other criminal proceedings.

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// True Copy //

Sd/-

Assistant Registrar (P&A)

/ /2020

Sub Assistant Registrar (CS)

vs

To

- 1.The Additional Chief Secretary to the Government
Home, Prohibition & Excise (XVI) Department,
Fort St. George,
Chennai-09.
- 2.The District Collector & District Magistrate,
Thanjavur District
Thanjavur.
- 3.The Superintendent of Prison
Central Prison,
Tiruchirappalli.
- 4.The Joint Secretary to Government
Public(law and order)
Fort St. George,
Chennai-09.
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

H.C.P. (MD) No.1042 of 2019

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