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H.C.P(MD)No.1049 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.02.2020

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THE HONOURABLE MR.JUSTICE T.RAJA

AND

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

H.C.P(MD)No.1049 of 2019

Syed Banu

... Petitioner

Vs.

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

2.The Commissioner of Police,
Tiruchirappalli city,
Trichirapalli District.

3.The Superintendent of Prison,
Trichy Central Prison,
Trichy District.

... Respondents

Prayer : Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Habeas Corpus to calling for the entire records connected with the detention order of the respondent No.2 in C.No.25/Detention/C.P.O/T.C/2019, dated 25.09.2019 and quash the same and direct the respondents to produce the body or person of the detenu namely Imran, son of Abdul Azeez, aged about 36 years, now detained as "Goonda" at Central Prison, Tiruchirapalli before this Hon'ble Court and to set him at liberty forthwith.

For Petitioner : Mr.C.Ramesh

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 viz., Imran and challenging the legality of the impugned order of detention dated 25.09.2019, 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 C.No.25/Detention/C.P.O/T.C/2019, has come forward with this Habeas Corpus Petition.

2.A perusal of the Grounds of Detention dated 25.09.2019, passed by the 2nd respondent herein, would disclose among other things that the detenu, viz., Imran came to the adverse notice in the following cases:-

Sl. No.	Name of the Police Station and Crime No.	Section of Law
1.	Thanjavur District, Kumbakonam East Police Station Cr.No.172/2019	U/s 392 I.P.C. @ 392, 395, 397, 399 I.P.C and Section 28 of Arms Act, 1959.
2.	Thanjavur District, Kumbakonam East Police Station Cr.No.192/2019	U/s 363, 511 and 397 I.P.C. @ 363, 511, 397 r/w 395, 399 I.P.C and Section 28 of Arms Act, 1959.

It is further stated in the grounds of detention that the detenu was involved in a case for the commission of offences under Section 392 I.P.C @ 392, 120(B), 395 r/w 34 I.P.C in Cantonment Police Station Crime No.1821 of 2018 (ground case). The detenu was arrested on 31.07.2019 and produced before the concerned Court on the same day and remanded to Judicial custody. 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.C.Ramesh, 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 listing out the infirmities committed by the second respondent, while passing the impugned detention order, narrated as follows:-

When the detenu was facing two adverse cases and one ground case, information of arrest either in the first adverse case or in the second adverse case was informed to the detenu or to his family members. Explaining further, in support of his submissions, drawing our notice to page No.155 of the booklet with regard to arrest information relating to the ground case, he stated that in the ground case, arrest information was given only to the jail authorities and that would vitiate the impugned detention order. Further, page No.15 of the booklet clearly shows that even the arrest information in the first adverse case was not properly communicated to any one. Even though the respondents claimed that



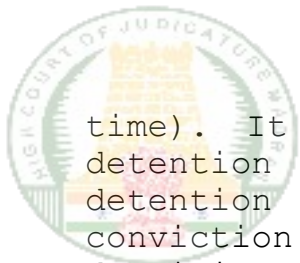
SMS has been sent, in page No.15 of the booklet, there is no evidence or proof of acknowledgement for sending the SMS either to the detenu or to any one of his family members. Similarly, with regard to the second adverse case, page No.62 of the booklet shows no evidence or proof of acknowledgement for sending the SMS either to the detenu or to any one of his family members. Besides that, no signature has been obtained from the concerned person. Therefore, in the light of the non-communication of the arrest intimation, either to the detenu or to any one of his 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.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 either to the detenu or to any one of his family members. Further, page No.155 of the booklet shows that arrest intimation in the ground case has been only sent to the Jail authorities and page Nos.15 and 62 of the booklet shows that the arrest intimation neither in respect of first adverse case nor in respect of the second adverse case 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.

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 has not been informed of his arrest 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 Commissioner of Police, Tiruchirappalli District, in C.No.25/Detention/C.P.O/T.C/2019, dated 25.09.2019. Consequently, the detenu namely Imran, son of Abdul Azeez, aged about 36 years, now detained at Central Prison, Tiruchirapalli 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)

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/ /2020

Sub Assistant Registrar(CS)

vs

To

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

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



2.The Commissioner of Police,
Tiruchirappalli city,
Trichirapalli District.

3.The Superintendent of Prison,
Trichy Central Prison,
Trichy District.

4.The Joint Secretay to Government,
Public (Law & Order)
Fort St. George, Chennai-9

5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

H.C.P (MD)No.1049 of 2019

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