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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.1187 of 2019

Amusu

... Petitioner

Vs.

1. State of Tamil Nadu,
Rep. by the Principal Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George,
Chennai - 600 009.
2. The District Magistrate and District Collector,
O/o. The District Collector and District Magistrate,
Pudukkottai District,
Pudukkottai.
3. The Superintendent of Prison,
Central Prison,
Tiruchirappalli.

... Respondents

Prayer : Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Habeas Corpus to call for the entire records pertaining to the detention order passed by the 2nd respondent in P.D.O.No.38/2019 dated 13.08.2019 and set aside the same as illegal and direct the respondents to produce the body or person of the petitioner's husband, namely, Sankar, S/o.Vellaiyan, male, aged about 46 years, who is detained in Central Prison, Tiruchirappalli, before this Court and set him at liberty.

For Petitioner : Mr.G.Mathavan

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, namely, Sankar, aged about 46 years. The detenu has been detained, as per the order
<https://hcservices.ecourts.gov.in/hcservices/>



of the second respondent, dated 13.08.2019, under Section 2(b) of the Tamil Nadu Act 14 of 1982, branding him as "BOOT-LEGGER". Challenging the same, the petitioner is before this Court in this Habeas Corpus Petition.

2. A perusal of the Grounds of Detention dated 13.08.2019, passed by the 2nd respondent herein, would disclose among other things that the detenu, viz. Sankar, came to the adverse notice in the following case:-

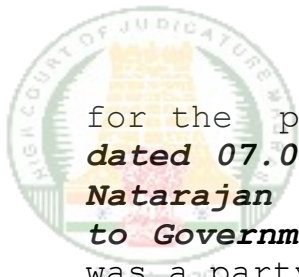
Sl . No .	Name of the Police Station and Crime No.	Section of Law
1.	Annavaasal Police Station Cr.No.136/2019	4(1)(a) Tamil Nadu Prohibition Act, 1937.

It is further stated in the grounds of detention that the detenu was involved in a case for the commission of offences under Section 4(1)(b), 4(1)(aaa) r/w. 4(1-A) Tamil Nadu Prohibition Act, 1937, in Prohibition Enforcement Wing in Crime No.867 of 2019 (ground case). The detenu was arrested on 01.08.2019 and produced before the Court of Judicial Magistrate No.II, Pudukkottai 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.G.Mathavan, 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 the booklet submitted that after the arrest of the accused in ground case in Crime No.867 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 brother's mobile No.9943150229 through SMS, 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



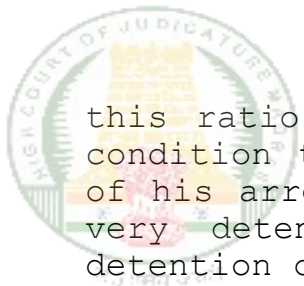
for the petitioner has relied on an unreported order of this Court **dated 07.06.2019** made in **H.C.P. (MD) No.26 of 2019** in the matter of **Natarajan v. State of Tamil Nadu, rep. by The Principal Secretary to Government and two others**, in which one of us (B.PUGALENDHI, J) was a party. The relevant 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.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 Nos.13 to 16 to of the booklet shows that the arrest intimation was sent to the brother's mobile No.9943150229 through SMS, but, the signature of the concerned person was not 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 capricious 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.

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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 Magistrate and District Collector, Pudukottai, in P.D.O.No.38/2019 dated 13.08.2019. Consequently, the detenu, namely, Sankar, S/o.Vellaiyan, aged about 46 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 (AS)

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Sub Assistant Registrar(CS)

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To

1. The Principal Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George, Chennai - 600 009.
2. The District Magistrate and District Collector,
O/o. The District Collector and District Magistrate,
Pudukkottai District, Pudukkottai.
3. The Superintendent of Prison,
Central Prison, Tiruchirappalli.
4. The Joint Secretary to Government,
Public (Law and Order),
Fort St. George, Chennai - 9
5. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.G.MATHAVAN, Advocate (SR-4943[F] dated 06/02/2020)

H.C.P(MD)No.1187 of 2019

06.02.2020

JMN(13.03.2020) 4P : 7C

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