



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.02.2020

CORAM:

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

AND

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

H.C.P. (MD)No.1202 of 2019

P.Kavitha

... Petitioner/mother of the detenu
Vs.

1.State of Tamil Nadu

rep. by the Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George, Chennai - 600 009.

2.The District Collector and District Magistrate

O/o. The District Collector and District Magistrate
Thanjavur District, Thanjavur.

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 the detention order passed in P.D.No.23/2019 dated 23.10.2019, on the file of the second respondent herein and set aside the same as illegal and direct the respondents to produce the body or person of the petitioner's son namely Ajithkumar, S/o.Palanisamy, male aged 23 years, who is detained in Central Prison, Tiruchirappalli, before this Court and set him at liberty forthwith.

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

For Respondents : Mr.K.Dinesh Babu

Additional Public Prosecutor

ORDER

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

Mrs.P.Kavitha, mother of the detenu, viz., Ajithkumar, S/o.Palanisamy, male aged 23 years, has come to this court, challenging the legality of the impugned detention order passed, in P.D.No.23/2019 dated 23.10.2019, by the second respondent herein and also to direct the respondents herein to release the detenu forthwith.

2.Learned counsel appearing for the petitioner would submit that the detenu has not involved in any other case, except the ground case. Further, the detenu has not suffered any adversarial remarks by the Police/respondent herein. Arguing further, he would



submit that when the detenu was arrested pursuant to the registration of a criminal case in Cr.No.340/2019 (ground case) for the offences punishable under Sections 302 and 120(b) I.P.C @ 147, 148, 341, 302 and 120(b) of I.P.C, on 30.09.2019, there is no necessity or requirement for the respondents to lodge him under the impugned detention order dated 23.10.2019.

3.Assailing the impugned detention order, the learned counsel appearing for the petitioner would further submit that when the petitioner was arrested in the ground case, arrest intimation was not even communicated to either the detenu or any one of his family members. Even the SMS said to have been given by the respondent Police has not reached and there is also no proof for the same. In support of his submission, drawing our attention to page No.31 of the booklet, he explained that there is no proof of sending the SMS even from Cell No.9791852092. 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.

4.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."

5.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.31 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.



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.Resultantly, this petition stands allowed and the impugned detention order stands quashed. Consequently, the detenu, Ajithkumar, S/o.Palanisamy, male aged 23 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 (W)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)



To

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

H.C.P. (MD)No.1202 of 2019
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SMA/12/03/2020/4P/6C