



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.01.2020

CORAM

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

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

H.C.P(MD)No.1203 of 2019

S.Kala ... Petitioner/Wife 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 - 9.

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

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 in detention order passed in P.D.No.26/2019 dated 23.10.2019 on the file of the 2nd respondent herein and set aside the same as illegal and direct the respondents to produce the body or person of the Petitioner's husband namely Silambarasan, son of Mathiyalagan, male, aged 30 years, who is detained at Central Prison, Tiruchirappalli before this Hon'ble Court and to set him at liberty.

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.**)

The petitioner is the wife of the detenu viz., Silambarasan and challenging the legality of the impugned order of detention dated 23.10.2019, 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.No.26/2019, came forward to file the present Habeas Corpus Petition.

2.A perusal of the Grounds of Detention dated 23.10.2019, passed by the 2nd respondent herein, would disclose among other things that the detenu, viz., Silambarasan came to the adverse notice in the following case:-

Sl . No .	Name of the Police Station and Crime No.	Section of Law
1.	Thanjavur Town West Police Station Cr.No.287 of 2019	U/s.294(b), 323, 324, 427 and 506 (ii) I.P.C.

It is further stated in the grounds of detention that the detenu was involved in a case for the commission of offences under Sections 302 and 120(b) I.P.C. altered into Sections 147, 148, 341, 302 and 120 (b) I.P.C. in Thanjavur Taluk Police Station in Crime No.340 of 2019 (ground case). The detenu was arrested on 30.09.2019 and produced before the Court of Judicial Magistrate No.II, Thanjavur on 01.10.2019 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 and Public Peace, 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.K.A.S.Prabhu, 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 for the petitioner would further submit that the detenu is suffering due to kidney problem and he was admitted to Government Hospital with complaints of abdominal



pain for one month and had underwent left URSL & DJ stenting on 14.07.2016 and again on 14.08.2018 at Thanjavur Medical College Hospital for Left PUJ calculus. Hence, he needs proper treatment from a private hospital.

5.Further, the learned counsel appearing for the petitioner drawing our attention to page No.68 of the booklet submitted that after the arrest of the accused in ground case in Crime No.340 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 mobile No.9791923134 through SMS, the person to whom the message was sent to the said mobile number has not been identified and besides 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.

6.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."

7.Since the learned counsel for the petitioner has submitted that the detenu is suffering due to kidney problem, this Court directed the learned Additional Public Prosecutor to get instruction regarding his illness. Accordingly, learned Additional Public Prosecutor appearing for the respondents has produced the report from Dr.L.Premalatha, Assistant Professor, Department of General Surgery, KAPV GMC & M.G.M. G.H., Trichy dated 28.01.2020, which reads as follows:

"28/1/20

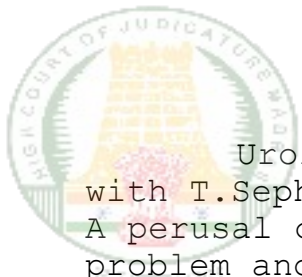
CT abdomen shows left kidney lower pole calculus 7mm.

(L) kidney smaller in size.

® Kidney shows pyclo nephritis features.

Urine culture of sensitivity :-

gram positive cocci present.



Normal flora.

Urologist opinion obtained suggested Conservative management with T.Sephran and T.Para."

A perusal of the above reports shows that the detenu has some kidney problem and he requires proper treatment.

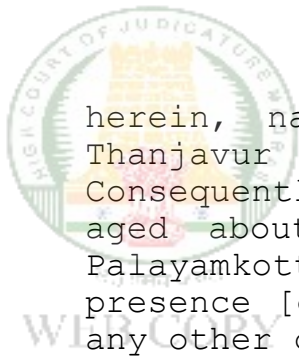
WEB COPY

8.Regarding non-communication of arrest of the detenu to his relatives, 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.68 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.

9.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.

10.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.

11.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 Collector and District Magistrate, Thanjavur District, Thanjavur, in P.D.No.26/2019 dated 23.10.2019. Consequently, the detenu, namely, Silambarasan, son of Mathiyalagan, aged about 30 years, who is now detained at Central Prison, Palayamkottai 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)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

sj

To

- 1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
State of Tamil Nadu,
Fort St. George,
Chennai - 9.
- 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 Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.
- 5.The Joint Secretary to Government,
Public (Law and Order),
Fort St. George, Chennai - 9

H.C.P(MD)No.1203 of 2019

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JMN(24.02.2020) 5P : 6C