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H.C.P.(MD) No.1353 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.11.2020

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

and

THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

H.C.P. (MD) No.1353 of 2019

A.Josephine Catherine

... Petitioner/Wife of the detenu
-vs-

1.The State of Tamil Nadu

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

2.The District Collector and District Magistrate
Kanyakumari District,
Nagercoil.

3.The Superintendent of Prison,
Central Prison,
Palayamkottai,
Tirunelveli.

... Respondents

PRAYER : Petition is filed under Article 226 of the Constitution of India praying for the issue of a Writ of Habeas Corpus, calling for the entire records connected with the detention order passed in P.D.No.47 of 2019, dated 09.12.2019 on the file of the second respondent herein and to quash the same and direct the respondents to produce the detenu or body of the detenu namely, the Petitioner's husband ie., Arunsaju, aged about 27 years, son of Rajagopal, now detained at Central Prison, Palayamkottai before this Court and set him at liberty forthwith.

For Petitioner : Mr.N.Pragalathan

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

O R D E R

(Order of the Court was made by K.KALYANASUNDARAM, J.)

This habeas corpus petition has been filed by the wife of the detenu, namely, Arun Saju, son of Rajagopal, aged 27 years, against the detention order passed by the second respondent, in P.D.No.47/2019, dated 09.12.2019, branding him as "Goonda" as contemplated under Section 2(f) of Tamil Nadu Act, 14 of 1982.



2. It is submitted by Mr.N.Pragalathan, learned counsel for the petitioner that though the detention order has been assailed on several grounds, it is liable to be set aside on the ground of non-intimation of arrest of the detenu in the second adverse case either to his family members or to his relatives. According to the learned counsel for the petitioner, the non-intimation of arrest would seriously affect the valuable rights of the detenu to make effective representation to the Authorities concerned for revocation of the detention order.

3. Per contra, Mr.K.Dinesh Babu, learned Additional Public Prosecutor appearing for the respondents, while reiterating the counter affidavit filed by the second respondent, would submit that the detention order has been passed by the Detaining Authority after satisfying with the materials placed by the Sponsoring Authority and there is no illegality or irregularity in the impugned detention order. Furthermore, the intimation of arrest of the detenu was given through SMS and hence, the rights of the detenu has not been affected in any manner.

4. Heard the learned counsel appearing on either side and perused the materials available on record.

5. A perusal of the arrest intimation form available at Page No.43 of the booklet shows that the arrest of the detenu in the second adverse case was intimated through SMS to the Cell No.9442798978. However, there is no material to show that the said Cell Number belongs to the family members of the detenu or his relatives and the text of the message is also not found place in the booklet. This Court, following the decision of the Honourable Apex Court in the case of **D.K.Basu vs. State of West Bengal**, reported in **AIR (1997) SC 610**, in several cases, has consistently held that if there is no proper intimation of arrest of the detenu either to his family members or his relatives, his valuable rights would seriously prejudiced on the sense that they will not have the opportunity to make effective representation to the Authority concerned in time for revocation of the detention order.

6. In the light of the above facts and circumstances, we are convinced that the impugned detention order would not stand to the scrutiny of this Court and the same is, therefore, liable to be set aside.

7. In fine, the Habeas Corpus Petition is allowed. The order of detention passed by the second respondent, in P.D.No.47/2019, dated 09.12.2019, is set aside. Consequently, the detenu, namely, Arun Saju, son of Rajagopal, aged 27 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 (CO)

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/ /2020

Sub Assistant Registrar(CS)

vsn

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To:

- 1.The Secretary to Government,
Government of Tamil Nadu,
Home, Prohibition and Excise Department
Fort St.George, Chennai-600 009.
- 2.The Joint Secretary to Government, Public(L&O) ,
Fort Saint George, Chennai-9.
- 3.The District Collector and District Magistrate
Kanyakumari District,
Nagercoil.
- 4.The Superintendent of Prison,
Central Prison,
Palayamkottai,
Tirunelveli.
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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SR(CO)

AP(24/11/2020) 3P 6C