

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 05.07.2021

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH
AND
THE HONOURABLE Mr.JUSTICE R.PONGIAPPAN

H.C.P.No.116 of 2021

Velu

... Petitioner

Vs.

1.The Secretary to Government
Home, Prohibition and Excise Department
Secretariat, Chennai-9

2.The District Collector and District Magistrate
Chengalpattu District
Chengalpattu

3.The Superintendent of Police
Chengalpattu, Chengalpattu District

4.The Superintendent
Central Prison
Puzhal, Chennai

5.The Inspector of Police
Thazhambur Police Station
Chengalpattu District

... Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a WRIT OF HABEAS CORPUS to direct the respondents to produce the detenu Balakrishnan @ Bala, S/o.Velu, aged 28 years, who is now detained in Central Prison, Puzhal, Chennai, in pursuance of the detention order passed by the 2nd respondent dated 24.10.2020 in BCDFGISSSV No.35/2020 before this Hon'ble Court, call for the records set aside the order and set the detenu at liberty forthwith.

For Petitioner : Ms.T.Yuvarani

For Respondents : Mr.R.Muniyapparaj
Government Advocate (Crl. Side)

O R D E R

[Order of the Court was made by P.N.PRAKASH, J.]

The petitioner is the father of the detenu viz., Balakrishnan @ Bala, S/o.Velu, aged 28 years. The detenu has been detained by the 2nd respondent by his order dated 24.10.2020 in BCDFGISSSV No.35/2020, holding him to be a "GOONDA", as contemplated under Section 2(f) of Tamil Nadu Act 14 of 1982. The said order is under challenge in this Habeas Corpus Petition.

2. We have heard the learned counsel appearing for the petitioner and the learned Government Advocate (Crl. Side) appearing for the respondents and we have also perused the records carefully.

3. Though many grounds have been raised in the petition, learned counsel appearing for the petitioner, confines his argument only in respect of non-application of mind on the part of the detaining authority in passing the order of detention. According to the learned counsel appearing for the petitioner, the sponsoring authority has stated in the Arrest Memo at page No.91 of the Booklet furnished to the detenu, that the arrest of the detenu has been intimated to the mother of the detenu. However, there is no material to substantiate the service of arrest intimation stated to have been made to the mother of the detenu. Therefore, it is stated that the detenu was deprived of making an effective representation in the absence of furnishing of full particulars by the detaining authority. Hence, it is stated that the Detaining Authority has passed the impugned detention order in total non-application of mind.

4. Per contra, the learned Government Advocate (Crl. Side) would submit that the arrest of the detenu has been intimated to the mother of the detenu through SMS. However, we find that there are no material particulars to substantiate the same. This Court has also taken the similar view in such cases that the detention order cannot be sustained.

5. As evidenced from the document in page No.91 of the Booklet furnished to us, a mere endorsement is made by the authorities to the effect that the arrest intimation has been informed to the mother of the detenu through SMS, but, no materials have been furnished to substantiate that the said intimation was sent through Thapal or Registered post or as per the procedure laid down. Therefore, non-furnishing of details given to the relatives of the detenu would amount to deprivation of the right of the detenu to make an effective representation

and the same would vitiate the order of detention and the same cannot be sustained in the eye of law.

6. It is a trite law that personal liberty protected under Article 21 is so sacrosanct and so high in the scale of Constitutional values that it is the obligation of the detaining authority to show that the impugned detention meticulously accords with the procedure established by law. Preventive detention is preventive and not punitive. When ordinary law of the land is sufficient to deal with, taking recourse to the preventive detention law is illegal. The impugned detention order is therefore liable to be quashed.

In the result, the Habeas Corpus Petition is allowed and the order of detention in BCDFGISSSV No.35/2020, dated 24.10.2020, passed by the 2nd respondent is set aside. The detenu viz., Balakrishnan @ Bala, S/o.Velu, aged 28 years, is directed to be released forthwith, unless his detention is required in connection with any other case.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Secretary to Government
Home, Prohibition and Excise Department
Secretariat, Chennai-9.
- 2.The Joint Secretary to Government
Public, Law and Order Department
Secretariat, Chennai-9.
- 3.The District Collector and District Magistrate
Chengalpattu District
Chengalpattu.
- 4.The Superintendent of Police
Chengalpattu, Chengalpattu District.
- 5.The Superintendent
Central Prison
Puzhal, Chennai.

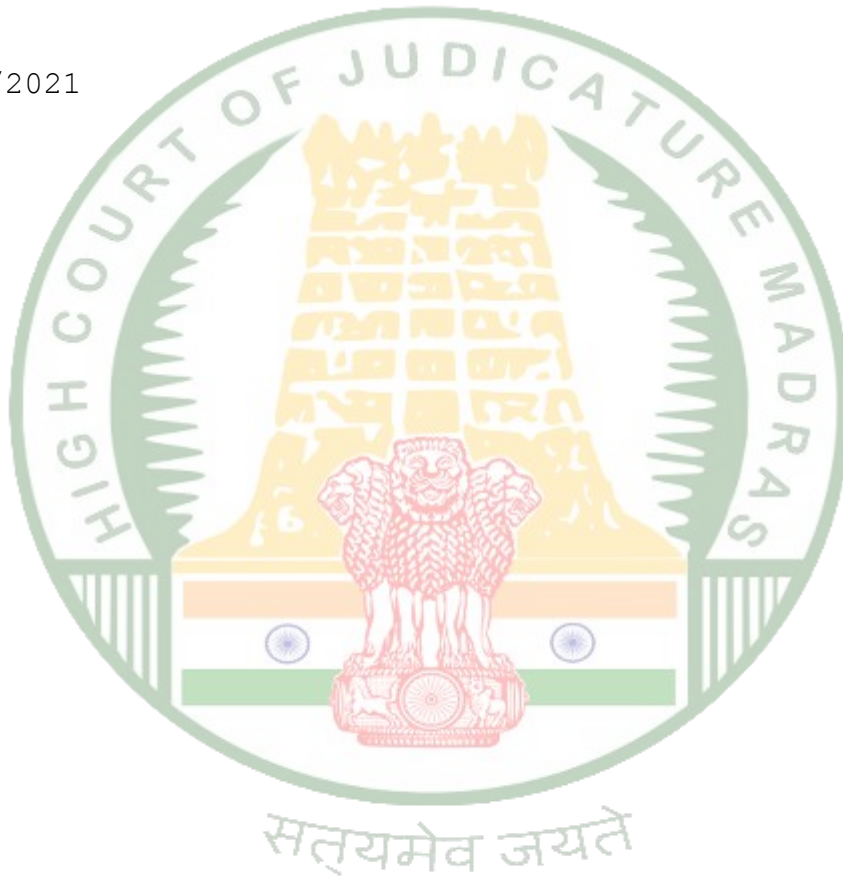
6.The Inspector of Police
Thazhambur Police Station
Chengalpattu District.

7.The Public Prosecutor
High Court, Madras.

+1cc to M/s.L.Baskaran, Advocate Sr.30975

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