

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 20.04.2021

CORAM

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

H.C.P.No.1843 of 2020

Unnamalai

.. Petitioner

Vs.

1.The State of Tamil Nadu
Rep. by its Secretary of Government
Home, Prohibition & Excise Department
Fort St. George
Chennai-9

2.The Commissioner of Police
Salem City

3.The Superintendent
Cental Prison
Salem

4.The Inspector of Police
Salem Town All Women Police Station
Salem City
Salem District

.. Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a WRIT OF HABEAS CORPUS to call for the records leading to the detention of petitioner's son, the detenu Loganathan, S/o.Raguraman, aged 35 years, presently detained in Central Prison, Salem under Act 14/1982, as 'sexual offender' vide the detention order dated 20.06.2020 in C.M.P.No.40/Sexual Offender/Salem City/2020 on the file of the 2nd respondent herein directing to produce the person or body of the detenu Loganathan, S/o.Raguraman, aged 35 years, before this Hon'ble Court and thereafter set him at liberty from the Central Prison, Salem by set aside the above order.

For Petitioner : Mr.B.Vasudevan

For Respondents : Mr.R.Prathap Kumar

Additional Public Prosecutor

ORDER

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

The petitioner is the father of the detenu, Loganathan, S/o.Raguraman, aged 35 years. The detenu has been detained by the 2nd respondent by his order dated 20.06.2020 in C.M.P.No.40/Sexual Offender/Salem City/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 Additional Public Prosecutor appearing for the respondents. We have also perused the records produced by the Detaining Authority.

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.76 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 Additional Public Prosecutor would submit that the arrest of the detenu has been intimated to the mother of the detenu over phone. He also filed his counter affidavit and strongly opposed the Habeas Corpus Petition.

5. 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.

6. As evidenced from the document in page No.76 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, but, no materials have been furnished to substantiate that the said intimation was sent through Tapal 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.

7. 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.

8. In the result, the Habeas Corpus Petition is allowed and the order of detention in C.M.P.No.40/Sexual Offender/Salem City/2020 dated 20.06.2020, passed by the 2nd respondent is set aside. The detenu, Loganathan, S/o.Raguraman, aged 35 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

To

- 1.The Secretary of Government
Home, Prohibition & Excise Department, Fort St. George, Chennai-9
- 2.The Joint Secretary to Government
Public, Law and Order Department, Secretariat, Chennai-9
- 3.The Commissioner of Police, Salem City
- 4.The Superintendent, Cental Prison, Salem
- 5.The Inspector of Police
Salem Town All Women Police Station, Salem City, Salem District
- 6.The Public Prosecutor, High Court, Madras

AKM/20.04.21/3P-7C/

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