

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.04.2021

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH
and
THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

H.C.P.No.2588 of 2020

R.Ragul,
S/o.Rajaram

...

Petitioner /
son of the detenu

versus

- 1.The State of Tamil Nadu,
Reptd. by its Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Fort St.George,
Chennai - 600 009.
- 2.The District Collector and
District Magistrate,
Cuddalore District, Cuddalore.
- 3.The Superintendent of Prison,
Central Prison, Cuddalore District.
- 4.The Superintendent of Police,
Cuddalore District, Cuddalore.
- 5.The Inspector of Police,
Prohibition and Enforcement Wing,
Panruti,
Cuddalore District.

...

Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus, calling for the records pertaining to the order of detention passed in C3/D.O./115/2020 dated 30.09.2020 passed by the second respondent and set aside the same and directing the respondents to produce the petitioner's father by name Kattaiyan @ Rajaram, son of Vasudevan, aged about 59 years before this Court now confined in Central Prison, Cuddalore and set him at liberty.

For Petitioner : Mr.K.Thenrajan

For Respondents : Mr.R.Prathap Kumar
Additional Public Prosecutor

O R D E R

[Order of the Court was made by R.PONGIAPPAN, J.]

The petitioner is the son of the detenu, Kattaiyan @ Rajaram, son of Vasudevan, aged about 59 years. The detenu has been detained by the second respondent by his order in C3/D.O./115/2020 dated 30.09.2020, holding him to be a "Bootlegger", as contemplated under Section 2(b) 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 we have also perused the records carefully. The learned Additional Public Prosecutor has filed a counter and strongly opposed this Petition.

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.121 of the Booklet furnished to the detenu, that the arrest of the detenu has been intimated to the wife of the detenu. However, there is no material to substantiate the service of arrest intimation stated to have been made to the wife 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 wife of the detenu through SMS.

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.121 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 wife of the detenu through SMS, 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 C3/D.O./115/2020 dated 30.09.2020, passed by the second respondent is set aside. The detenu, viz. Kattaiyan @ Rajaram, son of Vasudevan, aged about 59 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1.The Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise Department,
Secretariat, Fort St.George,
Chennai - 600 009.

2.The District Collector and
District Magistrate,
Cuddalore District, Cuddalore.

3.The Superintendent of Prison,
Central Prison, Cuddalore District.

4.The Superintendent of Police,
Cuddalore District, Cuddalore.

5.The Inspector of Police,
Prohibition and Enforcement Wing,
Panruti, Cuddalore District.

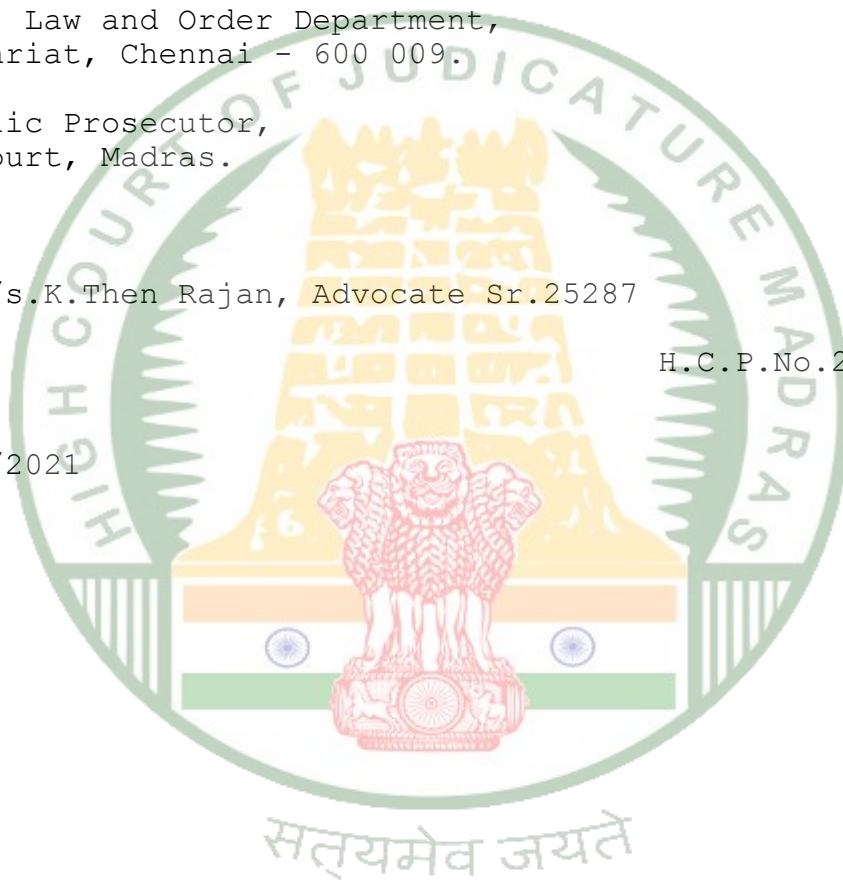
6.The Joint Secretary to Government of Tamil Nadu,
Public, Law and Order Department,
Secretariat, Chennai - 600 009.

7.The Public Prosecutor,
High Court, Madras.

+1cc to M/s.K.Then Rajan, Advocate Sr.25287

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srg 29/04/2021



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