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H.C.P.(MD) No.30 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.03.2021

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

and

THE HONOURABLE MR.JUSTICE G.ILANGO VAN

H.C.P.(MD) No.30 of 2021

Pitchammal

... Petitioner/
Mother of the detenu

-vs-

1.State of Tamil Nadu, rep.by
The Additional Chief Secretary to Government
Home, Prohibition and Excise Department
Secretariat, Chennai-9

2.The District Collector and
District Magistrate
O/o.The District Collector and
District Magistrate
Nagapattinam District
Nagapattinam

3.The Superintendent
Central Prison
Tiruchirappalli

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, to issue a writ of habeas corpus calling for the entire records in detention order passed in C.O.C.No.64/2020, dated 26.12.2020, on the file of the second respondent herein and set aside the same as illegal and direct the respondents to produce the body or person of the petitioner's son namely Chinrasu @ Radhakrishnan, son of Rayar, male, aged 24 years, who is detained in Central Prison, Tiruchirappalli, before this Court and set him at liberty.

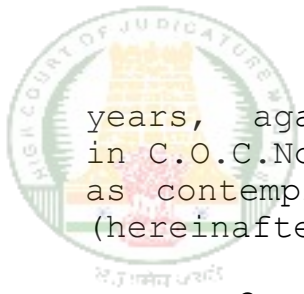
For Petitioner : Mr.Prabhu.K.A.S.

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 mother of the detenu, namely, Chinrasu @ Radhakrishnan, son of Rayar, aged 24



years, against the detention order passed by the second respondent, in C.O.C.No.64/2020, dated 26.12.2020, branding him as "Boot-Legger" as contemplated under Section 2(b) of Tamil Nadu Act, 14 of 1982 (hereinafter, referred to as "the Act").

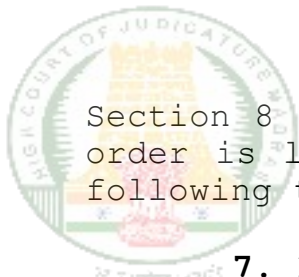
2. Though several grounds have been raised challenging the impugned detention order, Mr.K.A.S.Prabhu, learned counsel for the petitioner, would mainly contend that the impugned order of detention is liable to be set aside on the grounds of failure of intimation of arrest of the detenu either to his family members or his relatives and violation of Section 8 of the Act.

3. Per contra, Mr.K.Dinesh Babu, learned Additional Public Prosecutor, on instructions, submitted that the detention order has been rightly passed by the second respondent taking note of the activities of the detenu and it has been passed to prevent the detenu from indulging in similar activities in future. It is the further submission of the learned Additional Public Prosecutor that the the arrest of the detenu has been properly intimated to his family members and hence, prayed for dismissal of the habeas corpus petition.

4. We have heard the rival submissions and perused the materials placed on record.

5. In the case on hand, though it is contended by the learned Additional Public Prosecutor that the arrest of the detenu has been properly intimated to the family members of the detenu, a perusal of Page No.53 of the booklet filed by the petitioner would show that the arrest of the detenu in the ground case was intimated to Cell No.9159437214, but there is nothing on record to show that said cell number belongs to the family members or relatives of the detenu. 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 be 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. Further, it is seen from the records that the detention order was passed on 26.12.2020, however, as per the typed set filed by the petitioner, the relied on documents have been supplied to the detenu only on 05.01.2021. Section 8 of the Act mandates serving of the booklet and other relevant documents on the detenu within a period of five days from the date of detention. Since there was a delay of more than five days in furnishing the relied on documents to the detenu, we are of the opinion that there is a violation of



Section 8 of the Act. Hence, in our considered view, the detention order is liable to be set aside on the grounds as stated above by following the decision of the Honourable Apex Court referred supra.

7. In fine, the Habeas Corpus Petition is allowed. The order of detention passed by the second respondent, in C.O.C.No.64/2020, dated 26.12.2020, is set aside. Consequently, the detenu, namely, Chinrasu @ Radhakrishnan, son of Rayar, aged 24 years, who is now detained at Central Prison, Tiruchirappalli is directed to be released forthwith unless his presence or custody or detention is required in connection with any other case.

Sd/-

Assistant Registrar ()

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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.

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To:

- 1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
State of Tamil Nadu,
Secretariat, Chennai-9.
- 2.The District Collector and
District Magistrate,
O/o.The District Collector and
District Magistrate,
Nagapattinam District,
Nagapattinam.
- 3.The Superintendent,
Central Prison,
Tiruchirappalli.



4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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VB (23.03.2021) 4P 5C