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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.07.2021

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

and

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

H.C.P. (MD) No.596 of 2021

S.Susi ... Petitioner/Wife of the detenu

-vs-

1.State of Tamil Nadu,
Rep. by the Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai 600 009.

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

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

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of habeas corpus, calling for the entire records connected with the detention order of the second respondent in P.D.No.26/2021, dated 03.03.2021 and quash the same and direct the respondents to produce the detenu or body of the detenu namely, the petitioner's husband ie., Sarath alias SarathKumar, aged about 29 years, S/o. Sankar, now detained at the Central Prison, Trichy, before this Court and set him at liberty forthwith.

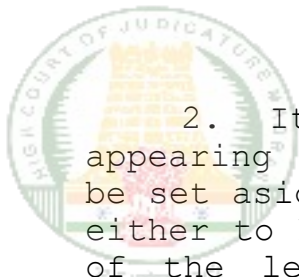
For Petitioner : Mr.N.Pragalathan

For Respondents : Mr.S.Ravi,
Standing Counsel for the State

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, Sarath @ SarathKumar, aged about 29 years, S/o.Sankar, against the detention order passed by the second respondent, in P.D.No.26/2021, dated 03.03.2021, 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 appearing for the petitioner that the detention order is liable to be set aside on the ground of non-intimation of arrest of the detenu either to his family members or his relatives. It is the contention of the learned counsel for the petitioner that the detenu was arrested on 04.02.2021. But the arrest of the detenu was not properly intimated to either the family members or the relatives of the petitioner which seriously affected the valuable right of the detenu to make effective representation for revocation of the detention order. In this regard, the learned counsel has drawn the attention of this Court to Page No.23 of the Booklet.

3. Per contra, Mr.S.Ravi, learned Standing counsel appearing for the respondents, 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. It is the further submission of the learned Standing counsel that the provisions of the relevant Act has been strictly followed by the Detaining Authority and there is no lapse on his part at the time of passing the Detention Order.

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.23 of the booklet shows that the arrest of the detenu in the ground case was intimated through SMS to the Cell No.8838355027. 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.26/2021, dated 03.03.2021, is set aside. Consequently, the detenu, namely,



Sarath @ SarathKumar, aged about 29 years, S/o. Sankar, who is now detained at Central Prison, Trichy, 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 (W)

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// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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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 Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai 600 009.
- 2.The District Collector and District Magistrate,
Thanjavur District,
Thanjavur.
- 3.The Superintendent of Prison
Central Prison, Trichy,
Trichy District.
4. The Joint Secretary to Government,
Public (Law &Order)
Fort St.Goerge, Chennai 600 009
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

H.C.P. (MD) No.596 of 2021
29.07.2021

PS (CO)

KB(12.08.2021) 3P 6C