



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **17.04.2021**

CORAM:

THE HONOURABLE MR.JUSTICE **K.KALYANASUNDARAM**

and

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

H.C.P. (MD) No.975 of 2020

Mohamed Sathik

... Petitioner/Detenu

versus

1. The Additional Chief Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise Department,
Fort St. George, Chennai - 600 009.
2. The District Collector and District Magistrate,
Office of the Collector and District Magistrate,
Theni District, Theni.
3. The Superintendent of Prison,
Madurai Central Prison,
Madurai District.

... Respondents

Habeas Corpus Petition filed under Article 226 of the Constitution of India, for the issuance of writ of Habeas Corpus, to call for the entire records connected with the detention order of the Respondent No.2 in Detention Order No.58/2020/C3 dated 16.10.2020 and quash the same and direct the respondents to produce the body or person of the detenu by name Mohamed Sathik, son of Kamaludeen, aged about 32 years, now confining as "Goonda" at Central Prison, Madurai before this Court and set him at liberty forthwith.

For Petitioner	: Mr.R.Alagumani
For Respondents	: Mr.Chellapandian, Additional Advocate General assisted by Mr.S.Chandrasekar, Additional Public Prosecutor

ORDER

[Order of the Court was delivered by **B.PUGALENDHI, J.**]

The second respondent District Collector detained the petitioner as a Goonda by order dated 16.10.2020 based on a case registered by Cumbum North Police Station in Crime No.1006/2020 under Sections 153(A), 505(1)(b), 505(2) IPC and on certain adverse cases pending against the petitioner. Challenging the order of



detention, the present Habeas Corpus Petition has been filed.

2. The fact of the ground case in Crime No.1006 of 2020 is that this petitioner Mohamed Sheik, S/o.Kamaldeen, in his face book, posted a photo of the Leader of the State Youth Wing of the Bharatiya Janata Party, holding a gun in his hands and made a comment below the Photo as follows:

"Attention Tamil Nadu Police, Is law equal for all? The state leader of the fascist Bharatiya Janata Party Youth Wing is holding gun in his hands. If a Islamist or a minority holds like this, they would have said that he is fascist killer or extremist or terrorist. Are all these killers out of sight of the police? Did the police give you the gun as a gift? Is the mob trying to intimidate or change like Northern State? We shout at the fascist killers. If you think or try to change Tamil Nadu like Northern state, we will chase all of you to the point where your hind legs hit the ground. The meeting was reported held in Theni yesterday. We request that action to be taken by Theni Superintendent of Police if this incident has taken place in Theni."

A statement has also been made levelling certain allegations as against the Tamil Nadu State Police, such as, the Tamil Nadu State Police has acted in a biased manner. The detaining authority, by taking into consideration of the same and the adverse cases pending against the petitioner, branded him as Goonda and detained him by the order impugned in this petition.

3. Mr.R.Alagumani, learned counsel for the petitioner submitted that this petitioner was arrested on 13.10.2020 and he was detained on 16.10.2020, within three days from the date of arrest and even before the preliminary investigation in Crime No.1006/2020 is completed. The truth in the complaint has not been ascertained and the relevant materials have not been collected and placed before the detaining authority. He further submitted that even the averment made in the ground case is only an expression which has been made by the petitioner in the face book page. It cannot be termed as an offence and the freedom of expression is guaranteed under Article 19 of the Constitution of India, but, the ground case has been registered as if the petitioner created riot among the communities. Insofar as the antecedent mentioned as against the petitioner is concerned, 14 cases have been registered as against the detenu and most of the cases, according to the learned counsel for the petitioner, are relating to the agitations on the amendment to the Citizenship Act. He further submitted that the Hon'ble Chief Minister has announced that the cases pertaining to the agitations on the amendment to the Citizenship Act would be withdrawn by the Government. The learned counsel also relied upon the order of this Court in CrI.O.P.(MD)No.3695 of 2021, wherein, it has been brought to the notice of this Court that the Government has taken a policy



indulged in protest against the amendment to the Citizenship Act.

4. Mr.R.Alagumani learned counsel for the petitioner has also drawn the attention of this Court that the family members of the detenu have not been intimated about the arrest. The learned counsel, by referring the arrest memo, which has been enclosed in the typed set of papers, submitted that the principles laid down by the Apex Case in the case of **D.K.Basu vs. State of West Bengal** reported in **AIR 1997 SC 610** has not been followed in this case. In the arrest memo, it has been mentioned that the arrest of the detenu has been informed to one Nazeer, S/o.Kamaldheen, but, there is no reference about his phone number or any acknowledgment to that effect. It is not known as to whether the arrest has been intimated as directed by the Hon'ble Apex Court in **D.K.Basu's case** to the said Nazeer either through SMS or in person and further, there is no acknowledgment from the said Nazeer.

5. Mr.Chellapandian, learned Additional Advocate General assisted by Mr.S.Chandrasekar, learned Additional Public Prosecutor submitted that the petitioner is having 14 previous cases and also involved in the offence in Crime No.1006/2020, which would cause riot among the different religions. Therefore, in order to prevent any further law and order problem, the detaining authority has arrived at a subjective satisfaction and detained him by branding him as Goonda and therefore, the impugned order is not liable to be interfered with.

6. This Court paid its anxious consideration to the rival submissions made and also perused the available materials on record.

7. The petitioner has been detained by the detaining authority based on the case registered by the Cumbum North Police Station in Crime No.1006/2020 on 16.10.2020. This case has been registered based on a face book post. The detention order has been passed, within three days from the date of registration of the case in Cr.No.1006/2020. No doubt, a case has been registered and the same is pending investigation. Apart from this ground case, the petitioner is also an accused in 14 other cases and most of the cases have been registered as against this petitioner and others for the agitation as against the amendment to the Citizenship Act. It is also informed by the State in the proceedings before this Court in CrI.O.P.(MD)No.3965 of 2021 that the Government has taken a policy decision that all the cases that were registered against those, who indulged in protest against the amendment in the Citizenship Act, is likely to be withdrawn by the State, but, as on date, there is no material to show that the case registered against the protestors on the amendment of Citizenship Act has been withdrawn.



8. Be that as it may, this Habeas Corpus Petition is filed challenging the detention order passed as against the petitioner under Act 14 of 1982. The learned counsel appearing for the petitioner raised a plea that the arrest has not been intimated properly to the family members or friends of the detenu.

9. A perusal of the arrest memo would show that the arrest of the detenu was intimated to his brother one Nazeer, S/o.Kamaldheen. Though it is mentioned in the arrest memo that the detenu's brother has been intimated about the arrest, the signature of the Nazeer has not been obtained in the arrest memo. It is also not known as to how this arrest has been intimated to the Nazeer, i.e. either through SMS or in person. The Hon'ble Apex Court in **D.K.Basu's case** (referred supra) issued certain guidelines with regard to the manner in which the arrest has to be effected and the manner in which the arrest has to be intimated either to the relatives or friends of the arrested person. For better appreciation, the relevant guidelines are extracted as under:

"36. We, therefore, consider it appropriate to issue the following requirements to be followed in all cases of arrest or detention till legal provisions are made in that behalf as preventive measures:

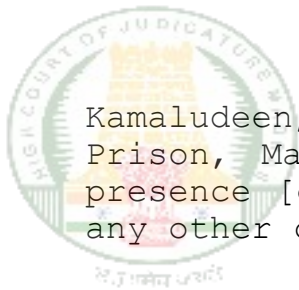
(1)

(2) That the police officer carrying out the arrest of the arrestee shall prepare a memo of arrest at the time of arrest and such memo shall be attested by atleast one witness, who may be either a member of the family of the arrestee or a respectable person of the locality from where the arrest is made. It shall also be counter signed by the arrestee and shall contain the time and date of arrest."

But, the said guidelines have not been followed in this case.

10. No materials were placed before the detaining authority to show that the arrest has been made in a proper manner. The detaining authority, without considering the same, has passed the impugned detention order. Therefore, we hold that the non-compliance of the guidelines issued by the Hon'ble Apex Court in **D.K.Basu's case**, i.e., that the family members of the detenu should be informed of his arrest, would vitiate the very detention itself. Accordingly, on this sole ground, the detention order is liable to set aside.

11. In the result, the Habeas Corpus Petition is allowed by setting aside the Order of Detention passed by the second respondent herein, namely, District Collector and District Magistrate, Theni District, in Detention Order No.58/2020/C3 dated 16.10.2020. Consequently, the detenu, namely, Mohamed Sathik, son of



Kamaludeen, aged about 32 years, who is now detained at Central Prison, Madurai, 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(CO)

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/ /2021

Sub Assistant Registrar(CS)

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To

1. The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George,
Chennai - 600 009.
2. The District Collector and District Magistrate,
Office of the Collector and District Magistrate,
Theni District.
Theni.
3. The Superintendent of Prison,
Madurai Central Prison,
Madurai District.
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

H.C.P. (MD) No.975 of 2020

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dks (CO)

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