



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.02.2021

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM
and
THE HONOURABLE MR.JUSTICE G.ILANGO VAN

H.C.P. (MD) No.1143 of 2020

Prabakaran

... Petitioner/Son of Detenue

-vs-

1. The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai - 600 009.
2. The District Collector and District Magistrate,
O/o the District Collector and
District Magistrate,
Thanjavur District.
3. The Superintendent of Prison,
Special Prison for Women,
Tiruchirappalli.
4. The Inspector of Police,
All Women Police Station,
Vallam,
(In charge of Tamil University Police Station)
Thanjavur 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 in P.D.No.55/2020 dated 08.09.2020 on the file of the second respondent and quash the same as illegal and direct the respondents to produce the body or person of the petitioner's mother namely, Manjula aged about 41 years, wife of Periyardasan, now confined at Special Prison for Women, Trichy before this Court and set her at liberty forthwith.

For Petitioner	:	Mr.K.Navaneetharaja
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 to quash the detention order passed by the second respondent in P.D.No.55/2020 dated 08.09.2020, wherein the detenu namely, Manjula, aged about 41 years has been branded as 'Immoral Traffic Offender' as contemplated under Section 2(g) of the Tamil Nadu Act 14 of 1982.

2.Mr.K.Navaneetharaja, learned counsel appearing for the petitioner would argue that though the petitioner has several grounds to assail the detention order impugned in this habeas corpus petition, he confines his argument with regard to the failure on the part of the respondents in intimating the arrest of the detenu to the family members or the relatives of the detenu. According to the learned counsel, non-intimation of the arrest to the relatives of the detenu or her family members infringed the rights of the detenu making effective representation to the authorities to revoke the detention order. In this regard, the learned counsel has placed reliance upon 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**. It is also submitted that while arriving at the subjective satisfaction, the detaining authority has wrongly described the detenu as habitual offender when she is implicated only in the ground case alone.

3.Per contra, Mr.K.Dinesh Babu, learned Additional Public Prosecutor appearing for the respondents would argue that the detaining authority, namely, the second respondent herein, after being satisfied with the materials produced by the sponsoring authority, has passed the detention order only to prevent the detenu from indulging in similar offence in future, which would prejudice to the maintenance of the public order. According to the learned Additional Public Prosecutor, there is no infirmity or irregularity in the order of detention passed by the second respondent and hence, he prayed for dismissal of the Habeas Corpus Petition.

4.We have heard the rival submissions and perused the materials available on records.

5.In the instant case, the detenu Manjula is one of the accused in Crime No.820 of 2020 which was registered by the Tamil University Police Station for the offences under Sections 3(1), 4(1) and 5(1)(a) of Immoral Traffic (Prevention) Act, 1956. In para 5 of the detention order, the detaining authority while



as habitual offender which shows lack of application of mind on the part of the detaining authority in reaching the subjective satisfaction.

6. That apart, in para 2 of the grounds of detention, it is stated that the arrest of the detenu has been intimated to through SMS to the mobile number of the detenu's son-9790128545. However, there is no material to show that the said Cell Number belongs to the son of the detenu and the text of the message is also not found place in the booklet.

7. This Court, following the decision of the Honourable Apex Court in the case of **D.K.Basu** (cited supra), 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 be 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.

8. In fine, the order of detention passed by the second respondent, in P.D.No.55/2020 dated 08.09.2020 is set aside and the Habeas Corpus Petition is allowed. Consequently, the detenu, namely, Manjula, wife of Periyardasan, Female, aged about 41 years, now detained at Special Prison for Women, Tiruchirappalli is directed to be released forthwith unless her presence or custody or detention is required in connection with any other case.

Sd/-

Assistant Registrar (CS-II)

// 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.

To

1. The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 600 009.

<https://hcservices.courts.gov.in/hcservices/>



2. The District Collector and District Magistrate,
O/o the District Collector and
District Magistrate,
Thanjavur District.
3. The Superintendent of Prison,
Special Prison for Women,
Tiruchirappalli.
4. The Inspector of Police,
All Women Police Station,
Vallam,
(In charge of Tamil University Police Station)
Thanjavur District.
5. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

H.C.P. (MD) No.1143 of 2020
12.02.2021

skn

AE/ (03/03/2021) 4P / 6C