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H.C.P.No.617 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 29.11.2022

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH
AND
THE HONOURABLE Mr.JUSTICE RMT.TEEKAA RAMAN

H.C.P.No.617 of 2022

Santhi

Vs.

.. Petitioner

1.The State rep. by its
Secretary
Home, Prohibition and Excise Department
Fort St. George, Chennai-9

2.The District Collector and District Magistrate
of Cuddalore District at Cuddalore

3.The Superintendent of Police
Cuddalore District
Cuddalore-1

4.The Superintendent
Central Prison
Cuddalore-1

5.The Inspector of Police
Chidambaram Town Police Station
Chidambaram

.. Respondents

1/6



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Petition filed under Article 226 of the Constitution of India, praying to issue a WRIT OF HABEAS CORPUS to call for the records relating to the detention order passed by the 2nd respondent herein made in order No.C3/D.O./09/2022 dated 02.04.2022 on the file of the 2nd respondent herein and quash the same as illegal and direct the respondents to produce the detenu *viz.* Siva @ Odappu Siva, S/o.Ramachandran, No.35/36, Govindasamy Street, Kulakarai, Chidambaram, Cuddalore District now confined in Central Prison, Cuddalore as a remand prisoner before this Hon'ble Court and set him at liberty.

For Petitioner : Ms.T.Gnana Banu
For Respondents : Mr.R.Muniyapparaj
Additional Public Prosecutor

ORDER

[Made by P.N.PRAKASH, J.]

The petitioner is the mother of the detenu *viz.*, Siva @ Odappu Siva, aged about 25 years, S/o.Ramachandran. The detenu has been detained by the 2nd respondent by his order dated 02.04.2022 in C3/D.O./09/2022 holding him to be a "Goonda", as contemplated under Section 2(f) of Tamil Nadu Act 14 of 1982. The said order is under challenge in this Habeas Corpus Petition.



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2. We have heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the respondents and we have also perused the records carefully.

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.43 of the booklet furnished to the detenu, that the arrest of the detenu has been intimated to the friend of the detenu. However, there is no material to substantiate the service of arrest intimation stated to have been made to the friend 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.



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4. *Per contra*, the learned Additional Public Prosecutor would submit that the arrest of the detenu has been intimated to the friend of the detenu through SMS. 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.

5. As evidenced from the document in page No.43 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 friend 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.



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6. 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.

In the result, the Habeas Corpus Petition is allowed and the order of detention in C3/D.O./09/2022 dated 02.04.2022, passed by the 2nd respondent is set aside. The detenu viz., Siva @ Odappu Siva, aged about 22 years, S/o.Ramachandran, is directed to be released forthwith, unless his detention is required in connection with any other case.

[P.N.P., J.] [T K R, J.]

29.11.2022

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Issue order copy by 30.11.2022



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P.N.PRAKASH, J.
AND
RMT.TEEKAA RAMAN, J.

gya

To

1.The Secretary
Home, Prohibition and Excise Department
Fort St. George, Chennai-9

2.The Joint Secretary to Government
Public, Law and Order Department
Secretariat, Chennai-9

3.The District Collector and District Magistrate
of Cuddalore District at Cuddalore

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4.The Superintendent of Police
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7.The Public Prosecutor
High Court, Madras

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