



WEB COPY



H.C.P.No.769 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.12.2022

CORAM:

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH
AND
THE HONOURABLE Mr.JUSTICE N. ANAND VENKATESH

H.C.P.No.769 of 2022

Kokila

Petitioner

v

- 1 The Secretary to the Government
Home, Prohibition and Excise Department
Secretariat, Chennai-9
- 2 The District Magistrate and District Collector
Dharmapuri District, Dharmapuri
- 3 The Superintendent of Police
Dharmapuri District, Dharmapuri
- 4 The Superintendent of Prison
Central Prison, Salem
- 5 The Inspector of Police
Adiyamankottai Police Station
Dharmapuri District

Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue
a WRIT OF HABEAS CORPUS to call for the records in connection with the



H.C.P.No.769 of 2022

order of detention passed by the 2nd respondent dated 27.04.2022 in S.C.No.09/2022 against the petitioner's husband Murugesan, aged 46 years, S/o.Chinnasamy, who is confined in the Central Prison, Salem and set aside the same and direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner Mr.D.Balaji
For Respondents Mr.R.Muniyapparaj
Additional Public Prosecutor

ORDER

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

The petitioner is the wife of the detenu. The detenu *viz.*, Murugesan, aged 46 years, S/o.Chinnasamy, has been detained by the 2nd respondent, by his order dated 27.04.2022 in S.C.No.09/2022, holding him to be a "Drug Offender", as contemplated under Section 2(e) of Tamil Nadu Act 14 of 1982. The said order is under challenge in this Habeas Corpus Petition.

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.



WEB COPY

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.129 of the Booklet furnished to the detenu, that the arrest of the detenu has been intimated to the wife of the detenu. However, there is no material to substantiate the service of arrest intimation stated to have been made to the wife 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.

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

WEB COPY

5. As evidenced from the document in page No.129 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 wife 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.

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.



H.C.P.No.769 of 2022

WEB COPY

In the result, the Habeas Corpus Petition is allowed and the order of detention in S.C.No.09/2022 dated 27.04.2022, passed by the 2nd respondent is set aside. The detenu viz., Murugesan, aged 46 years, S/o.Chinnasamy, is directed to be released forthwith, unless his detention is required in connection with any other case.

[P.N.P., J.]

[N.A.V., J.]

gya

13.12.2022

Issue order copy by 14.12.2022

(1/2)

To

- 1 The Secretary to the Government
Home, Prohibition and Excise Department
Secretariat, Chennai-9
- 2 The Joint Secretary to Government
Public, Law and Order Department
Secretariat, Chennai-9
- 3 The District Magistrate and District Collector
Dharmapuri District, Dharmapuri
- 4 The Superintendent of Police
Dharmapuri District, Dharmapuri
- 5 The Superintendent of Prison
Central Prison, Salem

5/6



WEB COPY



H.C.P.No.769 of 2022

P.N.PRAKASH, J.
AND
N. ANAND VENKATESH, J.

gya

- 6 The Inspector of Police
Adiyamankottai Police Station
Dharmapuri District
- 7 The Public Prosecutor
High Court, Madras

H.C.P.No.769 of 2022

13.12.2022
(1/2)