



WEB COPY



H.C.P.No.774 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 21.12.2022

CORAM

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

H.C.P.No.774 of 2022

S.Vasu

Petitioner

v

- 1 The Secretary to Government
Home, Prohibition and Excise Department
Government of Tamil Nadu
Fort St. George, Chennai 600 009
- 2 The District Magistrate and District Collector
O/o.The District Magistrate and District Collector
Tiruvallur District, Tiruvallur
- 3 The Superintendent of Police
O/o.The Superintendent of Police
Tiruvallur District, Tiruvallur
- 4 The Superintendent of Prison
Central Prison-II, Puzhal
Chennai 600 066
- 5 The Inspector of Police
Arambakkam Police Station
Gummudipoondi Taluk
Tiruvallur District

Respondents



H.C.P.No.774 of 2022

Petition filed under Article 226 of the Constitution of India, praying to issue a WRIT OF HABEAS CORPUS calling for the records of the second respondent herein in his proceedings under BCDFGISSSV No.13/2022 dated 11.04.2022 and quash the same and consequently direct the respondent to produce the petitioner's son, viz. Yuvaraj, aged 27 years, S/o.Vasu, confined in the Central Prison-II, Puzhal, Chennai, before this Court and set him at liberty forthwith.

For Petitioner Mr.S.Gopi
For Respondents Mr.R.Muniyapparaj
Additional Public Prosecutor

ORDER

[Made by N.ANAND VENKATESH, J.]

The petitioner is the father of the detenu viz., Yuvaraj, aged 27 years, S/o.Vasu. The detenu has been detained by the 2nd respondent by his order dated 11.04.2022 in No.BCDFGISSSV No.13/2022, 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. We have also perused the records produced by the Detaining Authority.



H.C.P.No.774 of 2022

3. The learned Additional Public Prosecutor, on instructions, submitted that the detenu was arrested on 17.03.2022 and the investigation was completed and final report was filed on time on 19.05.2022 before the Special Court for NDPS Act Cases, Chennai.

4. 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.55 of the Booklet furnished to the detenu, that the arrest of the detenu has been intimated to the father of the detenu. However, there is no material to substantiate the service of arrest intimation stated to have been made to the father 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.



H.C.P.No.774 of 2022

4. *Per contra*, the learned Additional Public Prosecutor would submit that the arrest of the detenu has been intimated to the father 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.55 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 father 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



H.C.P.No.774 of 2022

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 BCDFGISSSV No.13/2022 dated 11.04.2022, passed by the 2nd respondent, is set aside. The detenu viz., Yuvaraj, aged 27 years, S/o.Vasu, 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.]
21.12.2022

gya

Issue order copy by 22.12.2022



WEB COPY



H.C.P.No.774 of 2022

P.N.PRAKASH, J.

AND

N. ANAND VENKATESH, J.

gya

To

- 1 The Secretary to Government
Home, Prohibition and Excise Department
Government of Tamil Nadu
Fort St. George, Chennai 600 009
- 2 The Joint Secretary to Government
Public, Law and Order Department
Secretariat, Chennai-9
- 3 The District Magistrate and District Collector
O/o.The District Magistrate and District Collector
Tiruvallur District, Tiruvallur
- 4 The Superintendent of Police
O/o.The Superintendent of Police
Tiruvallur District, Tiruvallur
- 5 The Superintendent of Prison
Central Prison-II, Puzhal
Chennai 600 066
- 6 The Inspector of Police
Arambakkam Police Station
Gummudipoondi Taluk
Tiruvallur District
- 7 The Public Prosecutor
High Court, Madras

H.C.P.No.774 of 2022

21.12.2022