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H.C.P.No.872 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.11.2022

Coram

The Honourable Mr. Justice **P.N.PRAKASH**
and
The Honourable Mr. Justice **RMT.TEEKAA RAMAN**

H.C.P.No.872 of 2022

R.Kalaiselvi

.. Petitioner

Vs

1.The Secretary to Government,
Home, Prohibition & Excise Department,
Fort St. George,
Chennai - 600 009.

2.The Commissioner of Police,
Tambaram City,
Office of the Commissioner of Police,
Sholinganallur,
Chennai – 119.

3.The Superintendent of Prison,
Central Prison,
Puzhal,
Chennai – 600 066.

4.The Inspector of Police,
S-11, Tambaram Police Station,
Chennai.

.. Respondents



H.C.P.No.872 of 2022

WEB COPY

Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus to call for the records related to the detention order dated 25.03.2022 passed by the second respondent herein in BCDFGISSSV No.32/2022 and quash the same and direct the respondents herein to produce the petitioner's husband viz. Raja @ Raji, son of Venkatesan, aged about 39 years, residing at No.6, Nachupettai Street, Kunnavakkam Village, Uthiramerur, Kancheepuram District, who is presently undergoing detention in the Central Prison, Puzhal, Chennai, under Section 3(1) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Cyber Law Offenders, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Sexual Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982), before this Court and set him at liberty forthwith.

For Petitioner : Mr.J.Prakasam

For Respondents : Mr.R.Muniyapparaj
Addl. Public Prosecutor



H.C.P.No.872 of 2022

ORDER

(Made by *P.N.PRAKASH, J.*)

WEB COPY

The petitioner is the wife of the detenu Raja @ Raji, son of Venkatesan, aged about 39 years. The detenu has been detained by the second respondent by his order in BCDFGISSSV No.32/2022 dated 25.03.2022, 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.

3. Amidst several grounds raised by the learned counsel for the petitioner to attack the impugned order of detention, he has mainly focused his argument on the ground that the detaining authority failed to ask clarification from the sponsoring authority about non serving of arrest memo to the family members, relatives or friends of the detenu and there is no proof to show that the intimation of arrest was given, which clearly shows non-application of mind on the part of detaining authority.

4. A close reading of the booklet shows that though there is a mention about the adverse cases and ground case in the impugned order of detention, particularly Page Nos.147 & 149 of the booklet,



H.C.P.No.872 of 2022

there is no proof to show that the arrest of detenu has been intimated to the family members, relatives or friends as mandated by the Constitution. It is also to be remembered that in order to meet fairness, justness and reasonableness, after a person is taken into custody in pursuance of an order of detention, the members of his household, preferably the parent, the child or the spouse, must be informed in writing of the passing of the order of detention and of the fact that the detenu has been taken into custody, by duly intimating as to the place of detention, including the place where the detenu is transferred from time to time, which would ensure the right of the person arrested under preventive detention. If such intimation of arrest has not been made effectively, then, it would confer a right upon the arrestee to impugn the arrest effected on him.

5. In the case on hand, there is no proof to exhibit such intimation of arrest to the family members of the detenu. Thus, on account of the failure of the detaining authority in communicating the arrest of detenu to the family members, the detention order would be vitiated on the ground of deprivation of right guaranteed under Article 22(1) of the Constitution of India. Thus, for the reasons stated hereinabove, the impugned detention order cannot be sustained.



H.C.P.No.872 of 2022

WEB COPY

In the result, the Habeas Corpus Petition is allowed and the order of detention in BCDFGISSSV No.32/2022 dated 25.03.2022, passed by the second respondent is set aside. The detenu viz., Raja @ Raji, son of Venkatesan, aged about 39 years, is directed to be released forthwith unless his detention is required in connection with any other case.

(P.N.P., J.) (TKRJ)
08.11.2022

Index: Yes/No
nsd



H.C.P.No.872 of 2022

WEB COPY

To

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Chennai - 600 066.
- 4.The Inspector of Police,
S-11, Tambaram Police Station,
Chennai.
- 5.The Joint Secretary to Government of Tamil Nadu,
Public, Law and Order Department,
Secretariat, Chennai - 9.
- 6.The Public Prosecutor,
High Court, Madras.



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