



H.C.P.No.1073 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.12.2022

CORAM

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

H.C.P.No.1073 of 2022

N.Selvam

Petitioner

v

- 1 The State of Tamil Nadu
represented by its Secretary
Prohibition and Excise Department
Fort St. George
Chennai 600 009
- 2 The District Collector and District Magistrate
Vellore
Vellore District
- 3 The Superintendent of Prison
Central Prison
Salem, Salem District
- 4 The Superintendent of Police
Vellore
Vellore District
- 5 The Inspector of Police
Pernambet Police Station
Vellore District

Respondents



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Petition filed under Article 226 of the Constitution of India, praying to issue a WRIT OF HABEAS CORPUS calling for the records of the detention order dated 15.05.2022 in detention order C3/D.O. No.60/2022 on the file of the second respondent and quash the same and direct the respondents to produce the body of the detenu Madhavan, aged 29 years, S/o.Selvam, Hindu, who is now confined in the Central Prison, Salem, before this Court and set him at liberty.

For petitioner	Mr.R.Thamarai Selvan
For respondents	Mr.R.Muniyapparaj Additional Public Prosecutor

ORDER

[Made by N.ANAND VENKATESH, J.]

The petitioner is the father of the detenu *viz.*, Madhavan, aged 29 years, S/o.Selvam. The detenu has been detained by the 2nd respondent by his order dated 15.05.2022 in C3/D.O. No.60/2022, 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.



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



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5. As evidenced from the document in page No.45 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 mother of the detenu through SMS, but, no materials have been furnished to substantiate that the said intimation was sent through Thapal 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.



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In the result, the Habeas Corpus Petition is allowed and the order of detention in C3/D.O. No.60/2022 dated 15.05.2022, passed by the 2nd respondent is set aside. The detenu viz., Madhavan, aged 29 years, S/o.Selvam, 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.]

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15.12.2022

Issue order copy by 16.12.2022



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P.N.PRAKASH, J.

AND

N. ANAND VENKATESH, J.

gya

To

- 1 The Secretary
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 Collector and District Magistrate
Vellore, Vellore District
- 4 The Superintendent of Prison
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- 7 The Public Prosecutor
High Court, Madras

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