



WEB COPY



HCP No.1143 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.10.2022

Coram

**THE HONOURABLE MR. JUSTICE P.N.PRAKASH
and
THE HONOURABLE MR. JUSTICE RMT. TEEKAA RAMAN**

H.C.P.No.1143 of 2022

O.Thiruvarasu
S/o.Oiyappan

... Petitioner

Vs.

1.The Additional Chief Secretary to Government,
Government of Tamil Nadu (Home),
Prohibition and Excise Department,
Secretariat, Chennai – 09.

2.The Commissioner of Police,
Tambaram Police Commissioner,
42/1, Medavakkam Main Road,
Sholinganallur, Chennai – 600 119.

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

4.The Inspector of Police,
S-10 Pallikaranai Police Station,
Chengalpattu District.

... Respondents



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Writ Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus calling for the entire records connected with the order of the second respondent herein vide BCDFGISSSV No.23/2022 dated 20.03.2022 passed against the petitioner's son detenu, namely, Mohan s/o.Thiruvarasu, aged about 29 years, who is confined at Central Prison, Puzhal and set aside the same, consequently, direct the respondents herein to produce the body and person of the detenu before this Court and set him at liberty forthwith.

For Petitioner : Mr.R.Thamaraiselvan
For Respondents : Mr.R.Muniyapparaj
Additional Public Prosecutor

ORDER

[Made by ***RMT. TEEKAA RAMAN, J.***]

The petitioner is the father of the detenu, Mohan s/o.Thiruvarasu, aged about 29 years. The detenu has been detained by the second respondent by his order in BCDFGISSSV No.23/2022 dated 20.03.2022, holding 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 learned counsel for the petitioner and learned Additional Public Prosecutor for the respondents. We have also perused the records produced by the Detaining Authority.

3. Though many grounds have been raised in the petition, learned counsel 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 for the petitioner, the sponsoring authority has stated in the Arrest Memo 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.



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.

5. 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.

6. As evidenced from 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, 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 father 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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7. 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.

8. In the result, the Habeas Corpus Petition is allowed and the order of detention in BCDFGISSSV No.23/2022 dated 20.03.2022, passed by the second respondent is set aside. The detenu, viz., Mohan s/o.Thiruvarasu, aged about 29 years, is directed to be released forthwith unless his detention is required in connection with any other case.

[PNP, J.] [TKR, J.]
28.10.2022

Index: Yes/No
gm



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

gm

To

- 1.The Additional Chief Secretary to Government,
Government of Tamil Nadu (Home),
Prohibition and Excise Department,
Secretariat, Chennai – 09.
- 2.The Commissioner of Police,
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- 3.The Superintendent of Central Prison,
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- 4.The Inspector of Police,
S-10 Pallikaranai Police Station,
Chengalpattu District.
- 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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