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HCP No.1181 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.12.2022

Coram

**THE HONOURABLE MR. JUSTICE P.N.PRAKASH
and
THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH**

H.C.P.No.1181 of 2022

Abdul Majeed
S/o.Ummer Haji

... Petitioner

Vs.

- 1.The Secretary to the Government,
Home, Prohibition and Excise Department,
Chennai - 600 009.
- 2.The District Magistrate/District Collector,
Master Plan Complex,
Collector's Office,
Tiruvallur District,
Tiruvallur.
- 3.The Superintendent of Police,
Tiruvallur District,
Tiruvallur.
- 4.The Superintendent of Prison,
Central Prison - II,
Puzhal, Chennai.



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5. The Inspector of Police,
Kavarapettai Police Station,
Tiruvallur District.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus directing the respondents to produce the body of the detenu Noufal S/o.Hameed, aged 29 years, who is detained in Central Prison II, Puzhal, Chennai, before this Court and pass an order to call for the records of detention order passed by the second respondent in BCDFGISSSV No.23/2022 dated 31.05.2022, against my cousin Noufal S/o.Hameed and set aside the same and set the detenu at liberty.

For Petitioner : Mr.R.Rafi Babu
For Respondents : Mr.R.Muniyapparaj
Additional Public Prosecutor

ORDER

[Made by **N.ANAND VENKATESH, J.**]

The petitioner is the cousin of the detenu, Noufal S/o.Hameed, aged 29 years. The detenu has been detained by the second respondent by his order in BCDFGISSSV No.23/2022 dated 31.05.2022, 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.

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 detaining authority has stated, in page No.21 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. The learned Additional Public Prosecutor appearing for the State submitted that the detenu was arrested on 02.04.2022 and remanded to judicial custody. The investigation was completed and final report has been filed on time on 05.09.2022 before the I Additional District and Sessions Court, Special Court for NDPS Cases, Chennai and the same was taken on file in C.C.No.186 of 2022. The case is now at the stage of copies u/s.207 Cr.P.C.

5. The learned Additional Public Prosecutor further submitted that the quantity involved is 33 kgs. of Ganja, which is commercial quantity and hence, the restriction provided u/s.37 of the NDPS Act will apply even if the bail petition is considered by the concerned Court. The learned Additional Public Prosecutor submitted that the arrest of the detenu has been intimated to the mother of the detenu.

6. 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.



7. As evidenced from the document in page No.101 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, 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 mother 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.

8. 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 BCDFGISSSV No.23/2022 dated 31.05.2022, passed by the second respondent is set aside. The detenu, viz., Noufal S/o.Hameed, aged 29 years, is directed to be released forthwith unless his detention is required in connection with any other case.

[PNP, J.] [NAV, J.]
20.12.2022

Index: Yes/No
gm

To

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Tiruvallur.
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5. The Inspector of Police,
Kavarapettai Police Station,
Tiruvallur District.

6. The Joint Secretary to Government of Tamil Nadu,
Public, Law and Order Department,
Secretariat, Chennai – 9.

7. The Public Prosecutor,
High Court, Madras.



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