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HCP No.1166 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.1166 of 2022

Shakeela
W/o.Sulfikar

... 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,
Thiruvallur District, Thiruvallur.

3.The Superintendent of Prison,
Central Prison - II,
Puzhal, Chennai.

4.The Inspector of Police,
Kavarapettai Police Station,
Thiruvallur District.

... Respondents



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. 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. 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.



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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.

6. On a perusal of the booklet, we find that 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.



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7. 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 herein-above, the impugned detention order cannot be sustained.

In the result, the Habeas Corpus Petition is allowed and the order of detention in BCDFGISSSV No.24/2022 dated 31.05.2022, passed by the second respondent is set aside. The detenu, viz., Sulfikar S/o.Alikoya, aged 32 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



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- 4.The Superintendent of Prison,
Central Prison - II,
Puzhal, Chennai.
- 5.The Inspector of Police,
Kavarapettai Police Station,
Thiruvallur 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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P.N.PRAKASH, J.
and
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