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H.C.P.No.1177 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11..11..2022

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The Honourable Mr. Justice **P.N.PRAKASH**
and

The Honourable Mr. Justice **RMT.TEEKAA RAMAN**

Habeas Corpus Petition No.1177 of 2022

Asiya

..... Petitioner

-Versus-

- 1.The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai 600009.
- 2.The District Magistrate and District Collector,
Chengalpattu District, Chengalpattu.
- 3.The Superintendent of Police,
Chengalpattu District, Chengalpattu.
- 4.The Superintendent of Prison,
Central Prison at Puzhal,
Chennai 600066.
- 5.The Inspector of Police,
'Law and Order',
Melmaruvathur Police Station,
I/c Madurantakam Police Station,
Chengalpattu District.

.... Respondents



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Petition filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus calling for the entire records relating to the order of detention passed by the 2nd respondent dated 29.04.2022 in CPT No.24/2022 against the petitioner's son Naveen @ Gurubai Ashraf, male, aged 26 years, son of Balasubramanian and to set aside the same and consequently direct the respondents herein to produce the body of the detenu, now confined in Central Prison at Puzhal, Chennai, before this court and set him at liberty.

For Petitioner : Mr.S.Senthilvel

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

ORDER

The petitioner is the mother of the detenu viz., Naveen @ Gurubai @ Ashraf. The detenu has been detained by the second respondent by his order in CPT No.24/2022 dated 29.04.2022, 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.

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.93 of the Booklet furnished to the detenu, that the arrest of the detenu has been intimated to the unclce of the detenu. However, there is no material to substantiate the service of arrest intimation stated to have been made to the uncle 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 uncle of the detenu through SMS.



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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 document in page No.93 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 uncle 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.

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



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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 CPT No.24/2022 dated 29.04.2022, , passed by the second respondent is set aside. The detenu, viz., Naveen @ Gurubai @ Ashraf, son of Balasubramaniyan, is directed to be released forthwith unless his detention is required in connection with any other case.

(P.N.P., J.) (TKR., J.)
11..11..2022

Index: Yes/No
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To

1. The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai 600009.
2. The District Magistrate and District Collector,
Chengalpattu District, Chengalpattu.
3. The Superintendent of Police,
Chengalpattu District, Chengalpattu.
4. The Superintendent of Prison,
Central Prison at Puzhal,
Chennai 600066.
5. The Inspector of Police,
Law and Order,
Melmaruvathur Police Station,
I/c Madurantakam Police Station,
Chengalpattu 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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