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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.01.2022

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THE HONOURABLE MR. JUSTICE P.N.PRAKASH
and
THE HONOURABLE MRS.JUSTICE R.HEMALATHA

H.C.P.No.1303 of 2021

Karuppusamy
S/o.Tamilmani

.. Petitioner

Vs.

1. The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 600 009.
2. The District Collector and District Magistrate,
District Collector Office,
7/1, State Bank Road,
Gopalapuram, Coimbatore.
Tamil Nadu - 641 018.
3. The Superintendent of Police,
State Bank Road,
Coimbatore Central,
Coimbatore,
Tamil Nadu - 641 018.
4. The Superintendent of Prison,
Central Prison II,
Dr.Nanjappa Road,
Gandhipuram Coimbatore,
Coimbatore - 641 012.
5. The Inspector of Police,
Kinathukadavu Police Station,
No.101m, Pollachi Main Road,
Kinathukadavu, Coimbatore.
Tamil Nadu 642 109.

.. Respondents

Habeas Corpus Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Habeas Corpus directing the respondents to produce the petitioner/detenu Karuppusamy s/o.Tamilmani, aged about 25 years, who is now confined at Central Prison, Coimbatore, before this Court and



set him at liberty forthwith by setting aside the order of detention bearing order dated 28.04.2021 in Cr.M.P.No.05/G/2021/E1 passed by the second respondent and confirmed by the first respondent herein

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For Petitioner : Ms.Shaikh Mehrunisa Kasim
For Respondents : Mr.R.Muniyapparaj
Additional Public Prosecutor

ORDER

[Order of the Court was made by P.N.PRAKASH, J]

The petitioner/detenu viz., Karuppusamy s/o.Tamilmani, aged about 25 years, has been detained by the second respondent by his order in Cr.M.P.No.05/G/2021/E1 dated 28.04.2021, holding him to be a "Goonda", as contemplated under Section 2(f) of the 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 sponsoring authority has stated in the Arrest Memo at page No.60 of the Booklet furnished to the detenu, that the arrest of the detenu has been intimated to the aunt of the detenu. However, there is no material to substantiate the service of arrest intimation stated to have been made to the aunt 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 aunt of the detenu through SMS.

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.60 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 aunt 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 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.

In the result, the Habeas Corpus Petition is allowed and the order of detention in Cr.M.P.No.05/G/2021/E1 dated 28.04.2021 passed by the second respondent is set aside. The detenu, viz., Karuppusamy s/o.Tamilmani, aged about 25 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 600 009.



2. The District Collector and District Magistrate,
District Collector Office,
7/1, State Bank Road,
Gopalapuram, Coimbatore.
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5. The Inspector of Police,
Kinathukadavu Police Station,
No.101m, Pollachi Main Road,
Kinathukadavu, Coimbatore.
Tamil Nadu 642 109.

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

7. The Public Prosecutor,
High Court, Madras.

H.C.P.No.1303 of 2021

RR(CO)
SU(25/01/2022)