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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.03.2022

Coram

The Honourable Mr. Justice P.N.PRAKASH
and
The Honourable Mr. Justice A.A.NAKKIRAN

H.C.P.No.1442 of 2021

Banumathi ...Petitioner/Mother of Detenue
Vs.

- 1.State of Tamil Nadu represented by
The Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George,
Chennai-9.
- 2.The District Magistrate and District Collector,
Thiruvallur District, Thiruvallur.
- 3.The Superintendent of Police,
Thiruvallur District, Thiruvallur.
- 4.The Inspector of Police,
Gummidipoondi Police Station,
Thiruvallur District.
- 5.The Superintendent of Prison,
Central Prison,
Puzhal, Chennai.

...Respondents

Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus to call for the records relating to the detention order in B.C.D.F.G.I.S.S.V.No.93/2021 dated 06.08.2021 passed by the 2nd respondent under the Tamil Nadu Act 14 of 1982 and set aside the same and direct the respondent to produce the petitioner's son Barath @ Sivabarath, the detenu, now confined in the Central Prison, Puzhal at Chennai, before this Court and set the petitioner's son Barath @ Sivabarath, son of Srinivasan, aged about 26 years, the detenu, at liberty.



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For Petitioner : Mr.M.Baskar

For Respondents : Mr.M.Babu Muthumeeran,
Addl. Public Prosecutor

ORDER

[Made by P.N.PRAKASH, J.]

The petitioner is the mother of the detenu Barath @ Sivabarath, son of Srinivasan, aged about 26 years. The detenu has been detained by the second respondent by his order in B.C.D.F.G.I.S.S.S.V.No.93/2021 dated 06.08.2021, 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 sponsoring authority has stated in the Arrest Memo at page No.13 of the Booklet furnished to the detenu, that the arrest of the detenu has been intimated to the brother of the detenu. However, there is no material to substantiate the service of arrest intimation stated to have been made to the brother 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 Government Advocate (Crl.Side) would submit that the arrest of the detenu has been intimated to the brother 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.155 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 brother 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 B.C.D.F.G.I.S.S.S.V.No.93/2021 dated 06.08.2021, passed by the second respondent is set aside. The detenu, viz., Barath @ Sivabarath, son of Srinivasan, aged about 26 years, is directed to be released forthwith unless his detention is required in connection with any other case.

s/d-
Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

nsd

To

1. The Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George,
Chennai-9.



2.The District Magistrate and District Collector,
Thiruvallur District, Thiruvallur.

3.The Superintendent of Police,
Thiruvallur District, Thiruvallur.

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

5.The Superintendent of Prison,
Central Prison,
Puzhal, Chennai.

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.1442 of 2021

GPL (CO)
SP (29/03/2022)