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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.06.2022

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
AND
THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

H.C.P.NO.1479 OF 2021

K.Sumathi

.. Petitioner

Vs.

1. State of Tamil Nadu represented by
The Secretary to the Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai-600 009.
2. The District Collector and District Magistrate,
Office of the District Collectorate,
Coimbatore District.
3. The Superintendent of Police,
Office of the Superintendent of Police,
Coimbatore District.
4. The Superintendent,
Central Prison,
Coimbatore District.
5. The Inspector of Police,
All Women Police Station,
Perur, Coimbatore District.

.. Respondents

Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus directing the respondents to produce the records in connection with 2nd respondent's detention order vide Cr.M.P.No.26/S.O/2021/E1 dated on 27.08.2021 and quash the same produce the petitioner's son Vishnu, S/o.Krishnamoorthy, aged about 24 years, now detained in the Central Prison, Coimbatore, the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders,



Slum Grabbers and Video Pirates Act, 1982, before this Court and set him at liberty.

For Petitioner : Mr.Saravanan P.

For Respondents : Mr.E.Raj Thilak
Addl. Public Prosecutor

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ORDER

S.VAIDYANATHAN, J.
and
A.D.JAGADISH CHANDIRA, J.

The petitioner is the mother of the detenu Vishnu, S/o.Krishnamoorthy, aged about 24 years. The detenu has been detained by the second respondent by his order in Cr.M.P.No.26/S.O/2021/E1 dated 27.08.2021, holding him to be a "Sexual Offender", as contemplated under Section 2(ggg) 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. 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. A close reading of the booklet shows that though there is a mention about the adverse cases and ground case in the impugned order of detention, particularly Page No.25 of the booklet, 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.

5. 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 Cr.M.P.No.26/S.O/2021/E1 dated 27.08.2021, passed by the second respondent is set aside. The detenu, viz., Vishnu, S/o.Krishnamoorthy, aged about 24 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

nsd

To

1. The Secretary to the Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai-600 009.
2. The District Collector and District Magistrate,
Office of the District Collectorate,
Coimbatore District.
3. The Superintendent of Police,
Office of the Superintendent of Police,
Coimbatore District.



4. The Superintendent,
Central Prison,
Coimbatore District.

5. The Inspector of Police,
All Women Police Station,
Perur, Coimbatore 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.

+1cc to M/s.P.Saravanan, Advocate, S.R.No.32911

H.C.P.No.1479 of 2021

BD(CO)
RLP(14/06/2022)