



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.06.2022

CORAM

THE HONOURABLE MR.JUSTICE PARESH UPADHYAY
AND
THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

H.C.P.NO.2140 OF 2021

Kundukali @ Gurusankar Kali

...Petitioner

Vs

- 1.State represented by
The Additional Secretary to Government,
Home, Prohibition and Excise (XVI) Department,
Fort St.George, Secretariat,
Chennai - 600 009.
- 2.The District Magistrate and District Collector,
Office of the District Magistrate and District Collector,
Tiruppur District.
- 3.The Superintendent of Police,
Office of the Superintendent of Police,
Tiruppur District.
- 4.The Superintendent of Prison,
Central Prison at Coimbatore,
Coimbatore - 18.
- 5.The Inspector of Police,
Alangiyam Police Station,
Tiruppur District.

...Respondents

Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus calling for the records in detention order in Cr.M.P.No.46/Goonda/2021 dated 19.11.2021 on the file of the 2nd respondent and set aside the same and direct the respondents herein to produce the body of the petitioner/detenu Kundukali @ Gurusankar Kali, S/o.Subbaiah, aged 36 years, now confined in the Central Prison at Coimbatore, before this Court and set him at liberty.

For Petitioner : Mr.P.Saravanan

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



ORDER

(Order of the Court was made by A.D.JAGADISH CHANDIRA, J.)

The petitioner is the detenu Kundukali @ Gurusankar Kali, S/o.Subbaiah, aged 36 years. The detenu has been detained by the second respondent by his order in Cr.M.P.No.46/Goonda/2021 dated 19.11.2021, 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.

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.285 of the Booklet furnished to the detenu, that the arrest of the detenu has been intimated to the wife of the detenu. However, there is no material to substantiate the service of arrest intimation stated to have been made to the wife 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 wife of the detenu through SMS. He strongly opposed the habeas corpus petition by filing his counter.

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.285 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 wife 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.46/Goonda/2021 dated 19.11.2021, passed by the second respondent is set aside. The detenu, viz., Kundukali @ Gurusankar Kali, S/o.Subbaiah, aged 36 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-
Assistant Registrar(CO)

// True Copy //

Sub Assistant Registrar

nsd/33

To

- 1.The Additional Secretary to Government,
Home, Prohibition and Excise (XVI) Department,
Fort St.George, Secretariat,
Chennai - 600 009.
- 2.The District Magistrate and District Collector,
Office of the District Magistrate and District Collector,
Tiruppur District.
- 3.The Superintendent of Police,
Office of the Superintendent of Police,
Tiruppur District.
- 4.The Superintendent of Prison,
Central Prison at Coimbatore,
Coimbatore - 18.
- 5.The Inspector of Police,
Alangiyam Police Station,
Tiruppur District.



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

WEB COPY

7.The Public Prosecutor,
High Court, Madras.

H.C.P.No.2140 of 2021

KV(CO)
RVM(29/06/2022)