



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.06.2022

Coram:

The Honourable Mr. Justice S.VAIDYANATHAN
and
The Honourable Mr. Justice A.D.JAGADISH CHANDIRA

H.C.P.No.2184 of 2021

Somasundaram

.. Petitioner

Vs.

1. The Additional Chief Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise Department,
Fort St. George,
Chennai - 600 009.
2. The District Magistrate and District Collector,
Office of the Collector and District Magistrate,
Tiruppur District.
3. The Superintendent of Police,
Office of the Superintendent of Police,
Tiruppur District.
4. The Superintendent of Prison,
Coimbatore Central Prison,
Coimbatore.
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 entire records, connected with the detention order of the respondent No.2 in Cr.M.P. No.47/GOONDA/2021 dated 19.11.2021 and quash the same and direct the respondents to produce the body or person of the detenu by name Sankar alias Sankaranarayanan, son of Nagarajan, aged 36 years, now detained as "GOONDA" at Coimbatore Central Prison before this Court and set him at liberty forthwith.



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For Petitioner : Mr. R.Alagumani
For Respondents : Mr.M.Babu Muthumeeran
AdditionalPublicProsecutor

ORDER

(Hearing was made through Hybrid Mode)

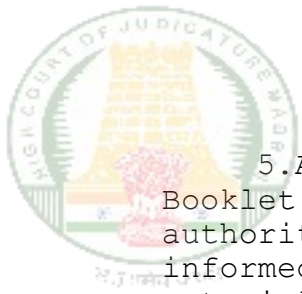
S.VAIDYANATHAN, J.,
and
A.D.JAGADISH CHANDIRA, J.,

The petitioner is the younger brother of the detenu Sankar alias Sankaranarayanan, aged 36 years, Son of Nagarajan. The detenu has been detained by the second respondent by his order in Cr.M.P. No.47/GOONDA/2021, dated 19.11.2021, holding 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. 259 of the Booklet furnished to the detenu, that the arrest of the detenu has been intimated to the relatives of the detenu. However, there is no material to substantiate the service of arrest intimation stated to have been made to the family member 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 relatives of the detenu through post. 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.



5.As evidenced from the document in page No.259 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 family member of the detenu through Post but no materials have been furnished to substantiate that the said intimation was sent through 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.

6.It is a trite law that personal liberty protected under Article 21 of the Constitution of India 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.

7. In the result, the Habeas Corpus Petition is allowed and the order of detention in Cr.M.P. No.47/GOONDA/2021, dated 19.11.2021, passed by the second respondent is set aside. The detenu, namely, Sankar alias Sankaranarayanan, aged 36 years, Son of Nagarajan , 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

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To

1. The Additional Chief Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise Department,
Fort St. George,
Chennai - 600 009.
2. The Joint Secretary to Government,
Public (L &O) Department,
Fort St. George Chenna-09
3. The District Magistrate and District Collector,
Office of the Collector and District Magistrate,
Tiruppur District.
4. The Superintendent of Police,
Office of the Superintendent of Police,
Tiruppur District.
5. The Superintendent of Prison,
Coimbatore Central Prison,
Coimbatore.
6. The Inspector of Police,
Alangiyam Police Station,
Tiruppur District.
7. The Public Prosecutor,
High Court, Madras.

H.C.P.No.2184 of 2021

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