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HCP(MD)No.759 of 2022

THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.07.2022

Coram

The Honourable Mr. Justice **P.N.PRAKASH**
and

The Honourable Mrs. Justice **R.HEMALATHA**

H.C.P.(MD)No.759 of 2022

K.Sathya

.. Petitioner/wife of
the detenu

Vs.

1.State of Tamil Nadu,
Rep. by Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai.

2.The District Collector cum District Magistrate,
Thanjavur District
Thanjavur.

3.The Superintendent of Prison,
Central Prison,
Tiruchirappalli
Tiruchirappalli District

.. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to
issue a writ of Habeas Corpus, to call for the entire records connected
with the detention order passed in P.D.No.151/2021 dated 19.12.2021



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on the file of the 2nd respondent herein and quash the same and direct the respondents to produce the detenu or body of the detenu namely the petitioner's husband ie., Karthik, aged about 31 years, S/o.Renganathan, now detained at the Central Prison, Tiruchirappalli, before this Court and set him at liberty forthwith.

For Petitioner : Mr.N.Pragalathan

For Respondents : Mr.S.Ravi
Additional Public Prosecutor

ORDER

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

The petitioner is the wife of the detenu, viz., Karthik, son of Renganathan, aged 31 years. The detenu has been detained by the second respondent by his order in P.D.No.151/2021 dated 19.12.2021 holding 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.



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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.23 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 Additional Public Prosecutor 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



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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.23 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



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preventive detention law is illegal. The impugned detention order is therefore liable to be quashed.

8. In the result, the Habeas Corpus Petition is allowed and the order of detention in P.D.No.151/2021 dated 19.12.2021, passed by the second respondent is set aside. The detenu, viz., Karthik, son of Renaganathan, aged 31 years, is directed to be released forthwith unless his detention is required in connection with any other case.

(P.N.P.,J.) (R.H.,J.)
19.07.2022

Index: Yes/No

RR

To

- 1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai.
- 2.The District Collector cum District Magistrate,
Thanjavur District, Thanjavur.
- 3.The Superintendent of Prison,
Central Prison,Tiruchirappalli
Tiruchirappalli District
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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and
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