



HCP(MD)No.859 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 30.09.2022

CORAM

THE HON'BLE MRS JUSTICE J. NISHA BANU
AND
THE HON'BLE MR JUSTICE N. ANAND VENKATESH

H.C.P.(MD)No.859 of 2022

Rajkumar

... Petitioner / Father of the Detenue

/Vs./

1.The Principal Secretary to the Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai-600 009.

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

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

...Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus, calling for the records pertaining to the impugned detention order passed by the second respondent made in his proceedings P.D.O.No.13 of 2022, dated 08.03.2022 in detaining the detenue under Section 2 (f) of the Tamil Nadu Act 14 of 1982 as a Goonda



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and quash the same and direct the respondents to produce the detenu, namely, Gurumoorthi, S/o.Rajkumar, Male, aged about 23 years, who is detained in Central Prison, Tiruchirappalli, before this Court and set him at liberty.

For Petitioner : Mr.C.Deepak

For Respondents : Mr.A.Thiruvadi Kumar

Additional Public Prosecutor

ORDER

J. NISHA BANU,J.

and

N. ANAND VENKATESH,J.

The petitioner is the father of the detenu viz., Gurumoorthi, S/o.Rajkumar, aged about 23 years. The detenu has been detained by the second respondent by his order in Detention Order P.D.O.No.13 of 2022, dated 08.03.2022 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. 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. The main ground that has been raised by the learned counsel appearing for the petitioner is that the arrest intimation was not given to the near relative of the detenu. Hence, the learned counsel submitted that mandatory requirements of informing the arrest was not made to the relative of the detenu and therefore, the detention order is vitiated on that ground also.



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5. The learned Additional Public Prosecutor strongly opposed the Habeas Corpus Petition by filing his counter. He would further submit that the arrest of the detenu has been intimated to the brother of the detenu through SMS.

6. The learned Additional Public Prosecutor, on instructions, submitted that the investigation was completed and final report was filed and it was taken on file by the Special Court for SC/ST Act cases, Pudukkottai, in Spl.S.C.No.33 of 2022 and the same is pending.

7. We went through the arrest intimation report and we find that the arrest intimation has been sent through an SMS through one mobile number. Neither the mobile number that has been shown is belonging to the brother of the detenue, nor the signature of the brother has been obtained for having intimated the arrest. In view of the same, there is a statutory violation of passing the detention order and the same can be taken into consideration to interfere with the detention order.



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8. As evidenced from the document 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.

9. 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.



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10. In the result, the Habeas Corpus Petition is allowed and the order of detention in P.D.O.No.13 of 2022, dated 08.03.2022. passed by the second respondent is set aside. The detenu, viz., Gurumoorthi, S/o.Rajkumar, aged about 23 years, is directed to be released forthwith unless his detention is required in connection with any other case.

(J.N.B.,J.) (N.A.V.,J.)
30.09.2022

Index : Yes/No
Internet : Yes
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To:

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1. The Principal Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Fort St. George, Chennai-9.
2. The District Collector and District Magistrate,
Pudukkottai District, Pudukkottai.
3. The Inspector of Police,
Pudukkottai Town Police Station,
Pudukkottai District.
4. The Superintendent of Prison,
Central Prison, Trichy.
5. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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