

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **30.11.2022**

CORAM

THE HON'BLE MR JUSTICE M.S.RAMESH
AND
THE HON'BLE MR JUSTICE N. ANAND VENKATESH

H.C.P.(MD)No.813 of 2022

C.Ajith

... Petitioner / Son of the Detenue

Vs.

- 1.State of Tamil Nadu,
Rep by the Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai-600 009.
- 2.The District Collector and District Magistrate,
O/o. The District Collector and District Magistrate,
Madurai District,
Madurai.
- 3.The Superintendant of Prison,
Special Prison for Women,
Madurai.

...Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus, calling for the entire records in detention order passed in B.C.D.F.G.I.S.S.S.V.No.29/2022 dated 13.05.2022 on the file of the 2nd respondent herein and set aside the same as illegal and direct the respondents to produce the body or person of the petitioner's mother,

namely, Pappa, W/o.Chinnan, Female, aged 48 years, who is detained in Special Prison for Women, Madurai, before this Court and set her at liberty.

For Petitioner : Mr.K.A.S.Prabhu

For Respondents : Mr.A.Thiruvadikumar

Additional Public Prosecutor

ORDER

M.S.RAMESH,J.

and

N. ANAND VENKATESH,J.

The petitioner is the son of the detenu viz., Pappa, W/o.Chinnan, aged 48 years. The detenu has been detained by the second respondent by his order in B.C.D.F.G.I.S.S.S.V.No.29/2022 dated 13.05.2022 holding him to be a "Drug Offender", as contemplated under Section 2(e) 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.69 of the Booklet furnished to the detenu, that the arrest of the detenu has been intimated to the daughter of the detenu. However, there is no material to substantiate the service of arrest intimation stated to have been made to the daughter of the detenu. 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 daughter of the detenu through SMS. He further submitted that investigation has been completed and charge sheet has been filed on 28.04.2022 before the NDPS Court, Madurai, and the same has not been taken on file.

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.69 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 daughter of the detenu through SMS, but, no materials have been furnished to substantiate that the said intimation was sent through Tapal or Registered post or as per the procedure laid down. Therefore, non-furnishing of details given to the relatives of the detenu 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. Since it is submitted that final report has been filed, the concerned Magistrate is directed to immediately act upon and proceed in accordance with law.

8. In the result, the Habeas Corpus Petition is allowed and the order of detention in B.C.D.F.G.I.S.S.S.V.No.29/2022 dated 13.05.2022 passed by the second respondent is set aside. The detenu, viz., Pappa, W/o.Chinnan, aged 48 years, is directed to be released forthwith unless her detention is required in connection with any other case.

(M.S.R.,J.) (N.A.V.,J.)
30.11.2022

Index : Yes/No
Internet : Yes
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M.S.RAMESH,J.

and

N. ANAND VENKATESH,J.

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To:

- 1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai-600 009.
- 2.The District Collector and District Magistrate,
O/o. The District Collector and District Magistrate,
Madurai District,
Madurai.
- 3.The Superintendant of Prison,
Special Prison for Women,
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- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
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