



HCP(MD)No.916 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 28.11.2022

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The Honourable Mr. Justice **M.S.RAMESH**
and
The Honourable Mr. Justice **N.ANAND VENKATESH**

H.C.P.(MD)No.658 of 2022

S.Marimuthu

... Petitioner/Father of the Detenu

Vs

1. The Additional Chief Secretary to Government,
Home Prohibition and Excise Department,
Secretariat, Chennai-9.

2. The District Collector and District Magistrate,
District Collector Office,
Ramanathapuram District

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

4. The Inspector of Police,
Thiruvadanai Police Station,
Ramanathapuram District

... Respondents

Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus to direct the respondents to produce the person or



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body of detenu namely M.Kalaimani S/o.Marimuthu aged about 31 years before this Court who is now detained in the Central Prison, Madurai, in pursuant to the detention order passed by the 2nd respondent in SR No. 11/Goonda/2022 dated 05.05.2022 and to call for the records and quash the same and set the detenu at liberty.

For Petitioner : Mr.S.Ramsundarvijayraj

For Respondents : Mr.A.Thiruvadikumar
Additional Public Prosecutor

ORDER

[Order of the Court was made by **N.ANAND VENKATESH, J.**]

The petitioner is the father of the detenu, viz.Kalaimani, son of Marimuthu, aged 31 years. The detenu has been detained by the second respondent by his order in SR No.11/Goonda/2022 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.14 of the Booklet furnished to the detenu, that the arrest of the detenu has been intimated to the father of the detenu. However, there is no material to substantiate the service of arrest intimation stated to have been made to the father 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 father of the detenu through SMS. He further submitted that investigation has been completed and charge sheet has been filed in PRC No.20/2022 before the learned Judicial Magistrate, Thiruvadanai within the stipulated time.



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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.14 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 father 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 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



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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 SR No.11/Goonda/2022 dated 05.05.2022 passed by the second respondent is set aside. The detenu, viz., Kalaimani, son of S.Marimuthu, aged 31 years, is directed to be released forthwith unless his detention is required in connection with any other case.

(M.S.R.,J.) (N.A.V.,J.)
28.11.2022

Index : Yes/No
Internet : Yes
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To

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Madurai Bench of Madras High Court, Madurai.



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