



HCP(MD)No.958 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED: 28.11.2022

CORAM

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

H.C.P.(MD)No.958 of 2022

Vellaiyammal

... Petitioner/Detenu

Vs

1. The Secretary to Government
State of Tamil Nadu
Home Prohibition and Excise Department,
Secretariat, Fort St. George, Chennai-9.

2. The District Collector and District Magistrate,
Office of the District Collector and District Magistrate,
Tiruchirappalli District
Tiruchirappalli.

3. The Superintendent of Prison
Tiruchirappalli Special Prison for Women
Tiruchirappalli.

... Respondents

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 of the respondent No.2 in Cr.M.P.No.28/2022 dated



HCP(MD)No.958 of 2022

02.05.2022 and quash the same and direct the respondents to produce the body or person of the detenu by name Vellaiyammal wife of Vellaisamy, aged about 40 years, now detained as Goonda at Trichy Special Prison for Women before this Court and set her at liberty forthwith.

For Petitioner : Mr.R.Alagumani

For Respondents : Mr.A.Thiruvadikumar
Additional Public Prosecutor

ORDER

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

The petitioner is the detenu, viz.Vellaiyammal, wife of Vellaisamy, aged 40 years. The detenu has been detained by the second respondent by his order in Cr.M.P.No.28/2022 dated 02.05.2022 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.



HCP(MD)No.958 of 2022

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.33 of the Booklet furnished to the detenu, that the arrest of the detenu has been intimated to the cousin of the detenu. However, there is no material to substantiate the service of arrest intimation stated to have been made to the cousin of the detenu and the mobile number, which is shown is not relatable to the relatives of the detenue. Therefore, it is stated that the detenue 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 detenue has been intimated to the cousin of the detenu through SMS. He further submitted that investigation has been completed and charge sheet has been filed on 04.07.2022 in PRC No.11/2022 before



HCP(MD)No.958 of 2022

the learned Judicial Magistrate, Manapparai within the stipulated time.

WEB COPY

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.33 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 cousin of the detainee 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 detainee would amount to deprivation of the right of the detainee 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



HCP(MD)No.958 of 2022

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 Cr.M.P.No.28/2022 dated 02.05.2022 passed by the second respondent is set aside. The detenue, viz., Vellaiammal, wife of Vellaisamy, aged 40 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.)
28.11.2022

Index : Yes/No
Internet : Yes
RR



HCP(MD)No.958 of 2022

To

1. The Secretary to Government
State of Tamil Nadu
Home Prohibition and Excise Department,
Secretariat, Fort St. George, Chennai-9.

2. The District Collector and District Magistrate,
Office of the District Collector and District Magistrate,
Tiruchirappalli District
Tiruchirappalli.

3. The Superintendent of Prison
Tiruchirappalli Special Prison for Women
Tiruchirappalli.

5. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.



WEB COPY



HCP(MD)No.958 of 2022

M.S.RAMESH,J.
and
N.ANAND VENKATESH,J.

RR

H.C.P.(MD)No.958 of 2022

28.11.2022