



HCP(MD)No.1052 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.09.2022

Coram

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

H.C.P.(MD)No.1052 of 2022

Navinkumar

.. Petitioner/Detenu

Vs.

1.The State of Tamil Nadu,
Rep. by the Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai-600 009.

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

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, calling for the entire records connected with



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the detention order passed in Cr.M.P.No.08 of 2022 dated 28.02.2022 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 Navinkumar, aged about 23 years, S/o.Duraisamy, now detained at the Central Prison, Tiruchirappalli, before this Court and set him at liberty forthwith.

For Petitioner : Mr.N.Pragalathan

For Respondents : Mr.A.Thiruvadikumar
Additional Public Prosecutor

ORDER

J. NISHA BANU,J.
and
N. ANAND VENKATESH,J.

The petitioner is the detenu, viz., Navinkumar, aged about 23 years, S/o.Duraisamy,. The detenu has been detained by the second respondent by his order in Cr.M.P.No.08 of 2022 dated 28.02.2022, 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.



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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 projected by the learned counsel for the petitioner is that when the detenu was arrested, the arrest memo that has been provided only shows the mobile number to which the SMS has been sent and no particulars have been given as to the person in whose name the mobile stands. Hence, the learned counsel submitted that mandatory requirement of informing the arrest was not made to the close relative of the detenu.



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5. *Per contra*, the learned Additional Public Prosecutor would submit that the arrest of the detenu has been intimated to the wife of the detenu through SMS.

6. 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.

7. As evidenced from the document in page No.71 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 wife 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.



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8. 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.

9. In the result, the Habeas Corpus Petition is allowed and the order of detention in Cr.M.P.No.15 of 2021 dated 25.10.2021, passed by the second respondent is set aside. The detenu, viz., Shanmugavel, son of Ramasamy, aged 31 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.)
23.09.2022

Index: Yes/No
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and
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Ns

To

- 1.The Secretary to Government,
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- 2.The District Collector and District Magistrate,
Perambalur District,
Perambalur.
- 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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