



HCP(MD)No.1089 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 30.11.2022

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

H.C.P.(MD)No.1089 of 2022

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... Petitioner / Mother of the Detenu

Vs.

- 1.The State of Tamil Nadu,
Rep. by the Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George, Chennai-9.
- 2.The District Collector and District Magistrate,
Ramanathapuram District.
- 3.The Superintendent of Central Prison,
Madurai.

...Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus, calling for the records relating to the detention order passed by the 2nd respondent vide Detention Order S.R.No. 12/Goonda/2022 dated 11.05.2022 and quash the same and direct the respondents to produce the detenu namely Athi @ Athirethineshwaran, S/o.Muthuramalingam, aged about 20 years now detained at Central Prison, Madurai, before this Court and set him at liberty.



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For Petitioner : Mr.D.Venkatesh
For Respondents : Mr.A.Thiruvadikumar
Additional Public Prosecutor

ORDER

M.S.RAMESH,J.

and

N. ANAND VENKATESH,J.

The petitioner is the mother of the detenu viz., Athi @ Athirethineshwaran, S/o.Muthuramalingam, aged about 20 years. The detenu has been detained by the second respondent by his order in S.R.No. 12/Goonda/2022 dated 11.05.2022 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. 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 mother of the detenu. However, there is no material to substantiate the service of arrest intimation stated to have been made to the mother 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 mother of the detenu through SMS. He further submitted that investigation has been completed and charge sheet has been filed on 25.05.2022 on time and the same was taken in P.R.C.No.25 of 2022 on the file of the learned Judicial Magistrate, Thiruvadanai and the case stands posted for supply of documents to the accused under Section 207 of Cr.P.C.,



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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 mother 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



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sufficient to deal with, taking recourse to the preventive detention law is illegal. The impugned detention order is therefore liable to be quashed.

8. In the result, the Habeas Corpus Petition is allowed and the order of detention in S.R.No.12/Goonda/2022 dated 11.05.2022 passed by the second respondent is set aside. The detenu, viz., Athi @ Athirethineshwaran, S/o.Muthuramalingam, aged about 20 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,
Fort St.George, Chennai-9.
- 2.The District Collector and District Magistrate,
Ramanathapuram District.
- 3.The Superintendant of Central Prison,
Madurai.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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