



WEB COPY



HCP(MD)No.1102 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.11.2022

CORAM

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

H.C.P.(MD)No.1102 of 2022

Agathiyan

... Petitioner/Detenu

Vs

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

2. The District Collector and District Magistrate,
Thanjavur District

3. The Superintendent of Prison
Central Prison,
Tiruchirappalli

... Respondents

Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus to call for the records pertaining to the impugned detention order passed by the 2nd respondent made in his proceedings P.D.No.44/2022 dated 08.05.2022 in detaining the detenu under Section 2(f) of the Tamil Nadu Act 14 of 1982 as a Goonda and quash the same and



HCP(MD)No.1102 of 2022

direct the respondents to produce the detenu namely Agathiyan @ Rajasekar, S/o.Raja male aged about 24 years who is detained in Central Prison, Tiruchirappalli, before this Court and set him at liberty.

For Petitioner : Mr.A.Joseph Jerry

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.Agathiyan @ Rajasekar, son of Raja , aged 24 years. The detenu has been detained by the second respondent by his order in P.D.No.44/2022 dated 08.05.2022 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.

3.Though many grounds have been raised in the petition, learned counsel appearing for the petitioner, confines his argument only in respect



HCP(MD)No.1102 of 2022

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.140 of the Booklet furnished to the detenu, that the arrest of the detenu has been intimated to the sister of the detenu. However, there is no material to substantiate the service of arrest intimation stated to have been made to the sister 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.

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.140 of the Booklet



HCP(MD)No.1102 of 2022

furnished to us, a mere endorsement is made by the authorities to the effect that the arrest intimation has been informed to the sister 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 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 P.D.No.44/2022 dated 08.05.2022 passed by the second



HCP(MD)No.1102 of 2022

respondent is set aside. The detenu, viz., Agathiyan @ Rajasekar, son of Rajs, aged 24 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.)
29.11.2022

Index : Yes/No
Internet : Yes
RR



HCP(MD)No.1102 of 2022

To

1. The Additional Chief Secretary to Government,
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2. The District Collector and District Magistrate,
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3. The Superintendent of Prison
Central Prison,
Tiruchirappalli

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



HCP(MD)No.1102 of 2022

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

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H.C.P.(MD)No.1102 of 2022

29.11.2022