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H.C.P.No.487 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.04.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

H.C.P.No.487 of 2023

S.Mangalam
W/o.Sankar

.. Petitioner/
Detenu Mother

Vs.

1. The Secretary to Government
Home, Prohibition and Excise Department
Secretariat
Fort St.George
Chennai – 600 009

2. The Commissioner of Police
Greater Chennai
Office of the Commissioner of Police
Vepery, Chennai

3. The Superintendent of Prison
Central Prison, Puzhal, Chennai

4. The Inspector of Police
F-4, Thousandlight Police Station
Chennai

... Respondents

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Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus calling for the records pertaining to the order of detention passed by the second respondent in his proceedings in No.363/BCDFGISSSV/2022 dated 14.10.2022 and quash the same as illegal and produce the detenu, namely Saran, son of Sankar, aged 24 years as Goonda, now he is confined in Central Prison, Puzhal-II, Chennai before this Court and set him at liberty.

For Petitioner	:	Mr.S.Lokesh
For Respondents	:	Mr.R.Muniyapparaj Additional Public Prosecutor Assisted by Mr.Sylvester John Advocate

ORDER

[Order of the Court was made by M.SUNDAR, J.,]

When the matter came up for admission on 30.03.2023, this Bench made an order and a scanned reproduction of the same is as follows:



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M.SUNDAR, J.
and
M.NIRMAL KUMAR, J.

(Order of the Court was made by M.SUNDAR, J.,)

Captioned Habeas Corpus Petition has been filed in this Court on 23.03.2023 *inter alia* assailing a detention order dated 14.10.2022 bearing reference BCDFGISSSV No. 363 of 2022 made by 'second respondent' [hereinafter 'Detaining Authority' for the sake of convenience and clarity]. To be noted, fourth respondent is the Sponsoring Authority.

2. To be noted, mother of the detenu is the petitioner.

3. Mr.C.Raja, learned counsel on record for habeas corpus petitioner is before us. Learned counsel for petitioner submits that ground case qua the detenu is for alleged offences under Sections 341, 294(b), 323, 392, 336, 397 and 506(ii) of 'The Indian Penal Code (45 of 1860)' [hereinafter TPC' for the sake of convenience and clarity] in Crime No.200 of 2022 on the file of F-4 Thousand Lights Police Station.

4. The aforementioned detention order has been made on the premise that the detenu is a 'Goonda' under Section 2(i) of 'The Tamil



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Nadu Prevention of Dangerous Activities of Bootleggers, Cyber law offenders, Drug offenders, Forest offenders, Goundas, Immoral traffic offenders, Naxal-offenders, Sexual-offenders, Shun-grabbers and Vidan Pustas Act, 1982 (Tamil Nadu Act No.14 of 1982) [hereinafter 'Act 14 of 1982' for the sake of convenience and clarity].

5. The detention order has been assailed later *afro* on the ground that in spite of the fact that the bail petition moved by the detenu in the ground case was dismissed, the detaining authority has come to the conclusion that there is an imminent possibility of the detenu coming out on bail, which reflects non-application of mind.

6. *Prima facie* case made out for admission. Admit. Issue Rule nisi returnable by four weeks.

7. M.R. Manivappan, Joint Additional Public Prosecutor, State of Tamil Nadu accepts notice for all respondents. List the captioned Habeas Corpus Petition accordingly.

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[M.N.J.] [M.N.K.J.]
30.03.2023

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தமிழக உயர் நீதிமன்றம்



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2. Mr.S.Lokesh, learned counsel on record for petitioner and Mr.R.Muniyapparaj, learned State Additional Public Prosecutor, assisted by Mr.Sylvester John, Advocate, for all the respondents are before us.

3. Though in the admission Board, learned counsel projected his case on the ground that in spite of the fact that the bail petition moved by the detenu in the ground case was dismissed, the detaining authority has come to the conclusion that there is an imminent possibility of the detenu coming out on bail, which reflects non-application of mind, today in final disposal, learned counsel submitted that in the bail application which is at pages 56 and 57 of the booklet, there is a variation between English and Tamil versions. Learned counsel further submitted that in the arrest memo though it is recorded that arrest memo was refused to be received and hence SMS was sent to the Mobile No.95562 45527, it is found that there is no material to substantiate that the mobile number belongs to relative of the detenu.

4. The learned Additional Public Prosecutor submitted that the petitioner has not made any such representation now putforth before this Court. Hence, the above contention may not be considered.



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5. As regards the contention that there is a variation in Tamil and English versions of bail application, we have perused the bail application at Pages 56 and 57 of the grounds booklet, in English version it is mentioned that '*Petition for bail under Section 436 / 437 Cr.P.C*' whereas in the Tamil version it says that '*கு.வி.ந.சு 437 பிரிவின் கீழ் தாக்கல் செய்யப்பட்டுள்ள 2வது ஜாமீன் மனு*' and it is seen that the term 'second bail application' is not there in the English version.

6.As regards the second point that there is no material to substantiate that mobile number belongs to relative of the detenu, this Court is of the view that proper intimation has to be given to the detenu and the detenu must know the reason for his arrest. The Hon'ble Division Bench of this Court in the case of "*Akilandeswari Vs. State, rep. by Secretary to Government, Home, Prohibition and Excise Department, Chennai-600 009*, reported in *2008 (3) MLJ (Crl.) 744*" held as follows:

"5. Though the learned Additional Public Prosecutor has made an attempt to justify by stating that the family members were intimated through telegrams, he has not placed any material to satisfy this Court as to whether any telegram was sent and the same was



acknowledged either by the family members or relatives of the detenu. A right of intimation to the relatives or family members of the detenu encompasses itself the fundamental right guaranteed under Article 22(5) of the Constitution of India to make a representation to the Detaining Authority or the State Government, as the case may be. In the event the arrest is not intimated, the detenu would not be in a position to make any such representation and in that context, failure on the part of the Detaining Authority would amount to deprivation of the right of the detenu to make an effective representation guaranteed under Article 22(5) of the Constitution of India. On the facts of this case, a specific averment has been made that the intimation was not given. We also find that the said averment has not been controverted in the Counter Affidavit. Though the learned Additional Public Prosecutor submitted that the family members of the detenu were informed of the arrest through telegram, there are no materials placed before us to substantiate the said contention. Further, the copy of the telegram has also not been furnished to the detenu. In the absence of the same, we are unable to accept the contention of the learned Additional Public Prosecutor that the family members or the relatives of the detenu were informed of



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the arrest. Under these circumstances, the detention order is vitiated.”

7.Following *Akilandeswari* Case (cited supra), this Court in the case of “*Ganesh @ Lingesan Vs. State of Tamil Nadu and another* reported in *2012 (3) MWN (Cr.) 315 DB*”, in paragraph No.10, held as follows:

“10. “No man shall be deprived of his life and liberty except by procedure established by law” has been guaranteed in Article 21 of the Constitution of India. His right to be informed of the arrest is his basic human right. Curtailment of his personal freedom in pursuance of a preventive detention law though has the constitutional sanction (see Article 22(3)(b) of the Constitution of India), it is conditioned by many constraints, one of which is a chance for him to make representation as against his detention. (see Article 22(5) of the Constitution of India). If his arrest is not informed to his dear and near ones, who could make representation as against the detention order on his behalf, he cannot exercise the right given to him under Article 22(5) of the Constitution of India. In this constitutional perspective, the argument of the Respondent that by non-supply of a copy of the telegram informing his arrest no prejudice is caused to the detenu is too big a pill to gulp.”



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8. In this case, the arrest intimation is through Short Message Service (SMS). The reason given is not acceptable, proper intimation has to be given to the detenu and the detenu must know the reason for his arrest. Further, right of the detenu to make an effective representation qua the preventive detention order is a Constitutional safeguard ingrained in Clause (5) of Article 22 of the Constitution of India. In the light of the narrative thus far, this Constitutional safeguard is hampered. The sequitur is, the impugned preventive detention order deserves to be dislodged.

9. The sequitur is, captioned HCP is allowed. Impugned detention order dated 14.10.2022 bearing reference BCDFGISSSV No.363/2022 made by the second respondent is set aside and the detenu Thiru.Saran, aged 24 years, son of Thiru.Sankar is directed to be set at liberty forthwith, if not required in connection with any other case / cases. There shall be no order as to costs.

(M.S.,J.)

(M.N.K.,J.)

26.04.2023

Index : No

Non-speaking order

Neutral Citation : No

gpa

P.S: Registry to forthwith communicate this order to Jail authorities in Central Prison, Puzhal

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To

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3. The Superintendent of Prison
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4. The Inspector of Police
F-4, Thousandlight Police Station
Chennai
5. The Public Prosecutor
Madras High Court, Chennai



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M.SUNDAR, J.,
and
M.NIRMAL KUMAR, J.,

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