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H.C.P.No.1064 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 03.01.2023

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THE HONOURABLE Mr.JUSTICE P.N.PRAKASH  
AND  
THE HONOURABLE Mr.JUSTICE N.ANAND VENKATESH

H.C.P.No.1064 of 2022

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.. Petitioner

Vs.

1.State of Tamil Nadu represented by  
its Secretary,  
Prohibition and Excise Department,  
Fort St.George,  
Chennai-600 009.

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

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

4.The Inspector of Police,  
Team - 36, Job Racket Wing,  
Central Crime Branch, Chennai.

.. Respondents



H.C.P.No.1064 of 2022

Petition filed under Article 226 of the Constitution of India, praying to

issue a WRIT OF HABEAS CORPUS calling for the records of the detention order dated 19.05.2022 in No.118/BCDFGISSSV/2022 on the file of the second respondent herein and quash the same and direct the respondents herein to produce the body of the detenu Thibakaran @ Manikandan, S/o.Mahalingam, aged about 39 years, who is now confined in the Central Prison, Puzhal, before this Court and set him at liberty.

For Petitioner : Mr.A.Saravanan  
for Mr.S.Shankar

For Respondents : Mr.R.Muniyapparaj  
Additional Public Prosecutor

### **ORDER**

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

The petitioner is the wife of the detenu viz., Thibakaran @ Manikandan, S/o.Mahalingam, aged about 39 years. The detenu has been detained by the 2<sup>nd</sup> respondent by his order in Memo No.118/BCDFGISSSV/2022 dated 19.05.2022, 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.475 of the Booklet furnished to the detenu, that the arrest of the detenu has been intimated to the wife of the detenu. However, there is no material to substantiate the service of arrest intimation stated to have been made to the wife 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 wife of the detenu through SMS. However, we find that there are no material particulars to substantiate the same.

5. As evidenced from the document in page No.475 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.

6. 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



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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.

In the result, the Habeas Corpus Petition is allowed and the order of detention in Memo No.118/BCDFGISSSV/2022 dated 19.05.2022, passed by the second respondent is set aside. The detenu viz., Thibakaran @ Manikandan, S/o.Mahalingam, aged about 39 years, is directed to be released forthwith, unless his detention is required in connection with any other case.

J.]

nsd

[P.N.P., J.]

[N.A.V.,

03.01.2023



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To

- 1.The Secretary,  
Prohibition and Excise Department,  
Fort St.George,  
Chennai-600 009.
- 2.The Commissioner of Police,  
Greater Chennai, Vepery, Chennai.
- 3.The Superintendent of Prison,  
Central Prison, Puzhal,  
Chennai.
- 4.The Inspector of Police,  
Team - 36, Job Racket Wing,  
Central Crime Branch, Chennai.
- 5.The Joint Secretary to Government,  
Public, Law and Order Department,  
Secretariat, Chennai-9.
- 6.The Public Prosecutor,  
High Court, Madras.



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P.N.PRAKASH, J.  
AND  
N.ANAND VENKATESH, J.

nsd

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