



H.C.P.No.1125 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

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.. Petitioner

Vs.

1.State of Tamil Nadu represented by  
its Secretary to Government,  
Home, Prohibition and Excise Department,  
Fort St.George, Chennai-9.

2.The Commissioner of Police,  
Salem City, Salem District.

3.The Superintendent,  
Central Prison, Salem - 636 007.

4.The Inspector of Police,  
Shevapet Police Station, Salem District.  
(Crime No.112/2022)

.. Respondents

Petition filed under Article 226 of the Constitution of India, praying to  
issue a WRIT OF HABEAS CORPUS to call for the entire records leading to  
the detention of petitioner's brother, the detenu Safi @ Safisheik, aged 30



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years, son of Abdul Jaffar, 9-5/279, Badruddin Colony, Irani Halli, Bidhar District, Karnataka State, presently detained in the Central Prison, Salem, under Act 14/1982 branded as GOONDA *vide* the detention order dated 29.04.2022 in C.M.P.No.35/Goonda/Salem City/2022 on the file of the second respondent herein directing to produce the person or body of the detenu Safi @ Safisheik, aged 30 years, son of Abdul Jaffar, before this Court and thereafter, set him at liberty from the Central Prison, Salem, by setting aside the above order.

For Petitioner : Mr.B.Vasudevan

For Respondents : Mr.R.Muniyapparaj  
Additional Public Prosecutor

### **ORDER**

[Order of the Court was made by P.N.PRAKASH, J.]

The petitioner is the brother of the detenu *viz.*, Safi @ Safisheik, aged 30 years, son of Abdul Jaffar. The detenu has been detained by the 2<sup>nd</sup> respondent by his order in C.M.P.No.35/Goonda/Salem City/2022 dated 29.04.2022, 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.



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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. Amidst several grounds raised by the learned counsel for the petitioner to attack the impugned order of detention, he has mainly focused his argument on the ground that the detaining authority failed to ask clarification from the sponsoring authority about non serving of arrest memo to the family members, relatives or friends of the detenu and there is no proof to show that the intimation of arrest was given, which clearly shows non-application of mind on the part of detaining authority.

4. A close reading of the booklet shows that though there is a mention about the adverse cases and ground case in the impugned order of detention, particularly Page No.70 of the booklet, there is no proof to show that the arrest of detenu has been intimated to the family members, relatives or friends as mandated by the Constitution. It is also to be remembered that



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in order to meet fairness, justness and reasonableness, after a person is taken into custody in pursuance of an order of detention, the members of his household, preferably the parent, the child or the spouse, must be informed in writing of the passing of the order of detention and of the fact that the detenu has been taken into custody, by duly intimating as to the place of detention, including the place where the detenu is transferred from time to time, which would ensure the right of the person arrested under preventive detention. If such intimation of arrest has not been made effectively, then, it would confer a right upon the arrestee to impugn the arrest effected on him.

5. In the case on hand, there is no proof to exhibit such intimation of arrest to the family members of the detenu. Thus, on account of the failure of the detaining authority in communicating the arrest of detenu to the family members, the detention order would be vitiated on the ground of deprivation of right guaranteed under Article 22(1) of the Constitution of India. Thus, for the reasons stated herein-above, the impugned detention order cannot be sustained.



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In the result, the Habeas Corpus Petition is allowed and the order of detention in C.M.P.No.35/Goonda/Salem City/2022 dated 29.04.2022, passed by the second respondent is set aside. The detenu viz., Safi @ Safisheik, aged 30 years, son of Abdul Jaffar, is directed to be released forthwith, unless his detention is required in connection with any other case.

J.]

[P.N.P., J.]

[N.A.V.,

03.01.2023

nsd

To

1.The Secretary to Government,  
Home, Prohibition and Excise Department,  
Fort St.George, Chennai-9.

2.The Commissioner of Police, Salem City, Salem District.

3.The Superintendent, Central Prison,Salem - 636 007.

4.The Inspector of Police,  
Shevapet Police Station,  
Salem District.

5.The Joint Secretary to Government,  
Public, Law and Order Department,  
Secretariat, Chennai-9.

6.The Public Prosecutor,

5/6



High Court, Madras.

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

nsd

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