



H.C.P.No.1220 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 03.01.2023

CORAM

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

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Ashik Ali

.. 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 son, the detenu Mohammad Asisf Ali, aged 23



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years, son of Asik Ali, 51, Nideban, Gorchinaholi, 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.34/Goonda/Salem City/2022 on the file of the second respondent herein directing to produce the person or body of the detenu Muhammad Asisf Ali, aged 23 years, son of Asik Ali, 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 N.ANAND VENKATESH, J.]

The petitioner is the father of the detenu *viz.*, Muhammad Asisf Ali, aged 23 years, son of Asik Ali. The detenu has been detained by the 2nd respondent by his order in C.M.P.No.34/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.

2. We have heard the learned counsel appearing for the petitioner



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and the learned Additional Public Prosecutor appearing for the respondents.

WEB COM 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.42 of the Booklet furnished to the detenu, that the arrest of the detenu has been intimated to the father of the detenu. However, there is no material to substantiate the service of arrest intimation stated to have been made to the father 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



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submit that the arrest of the detenu has been intimated to the father of the detenu over phone. However, we find that there are no material particulars to substantiate the same.

5. As evidenced from the document in page No.42 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 father of the detenu over phone, 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 meticulously accords with the procedure established by law. Preventive



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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 C.M.P.No.34/Goonda/Salem City/2022 dated 29.04.2022, passed by the second respondent is set aside. The detenu viz., Muhammad Asisf Ali, aged 23 years, son of Asik Ali, 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
WEB COPY

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,
High Court, Madras.



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

nsd

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