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H.C.P.No.1249 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 10.01.2023

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

H.C.P.No.1249 of 2022

Sasima Banu

.. Petitioner

Vs.

1.The Secretary to the Government,
Government of Tamil Nadu,
(Home), Prohibition and Excise Department,
Secretariat,
Chennai - 600 009.

2.The District Collector and District Magistrate,
Thiruvannamalai District, Thiruvannamalai.

3.The Superintendent of Police,
Thiruvannamalai District, Thiruvannamalai.

4.The Inspector of Police,
Cheyyar Police Station,
Thiruvannamalai District.

5.The Superintendent of Prison,
Central Prison,
Vellore.

.. Respondents



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

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to issue a WRIT OF HABEAS CORPUS calling for the entire records connected with the order of the second respondent herein in D.O.55/2022-C2 dated 10.05.2022 passed against the petitioner's brother the detenu *viz.* Mohamad Faizhal @ Faizhal, S/o.Kadhar Suldhan, aged 44 years, who is confined at the Central Prison, Vellore and set aside the same and consequently, direct the respondents herein to produce the body and person of the detenu before this Court and set him at liberty forthwith.

For Petitioner : Mr.D.Magesh

For Respondents : Mr.R.Muniyapparaj
Additional Public Prosecutor

ORDER

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

The petitioner is the sister of the detenu *viz.*, Mohamad Faizhal @ Faizhal, S/o.Kadhar Suldhan, aged 44 years. The detenu has been detained by the 2nd respondent by his order in D.O.55/2022-C2 dated 10.05.2022, 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.20 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 sister 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.20 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 sister 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 D.O.55/2022-C2 dated 10.05.2022, passed by the second respondent is set aside. The detenu viz., Mohamad Faizhal @ Faizhal, S/o.Kadhar Suldhan, aged 44 years, is directed to be released forthwith, unless his detention is required in connection with any other case.

[P.N.P., J.] [N.A.V., J.]
10.01.2023

nsd



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- 2.The District Collector and District Magistrate,
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- 3.The Superintendent of Police,
Thiruvannamalai District, Thiruvannamalai.
- 4.The Inspector of Police,
Cheyyar Police Station,
Thiruvannamalai District.
- 5.The Superintendent of Prison,
Central Prison,
Vellore.
- 6.The Joint Secretary to Government,
Public, Law and Order Department,
Secretariat, Chennai-9.
- 7.The Public Prosecutor,
High Court, Madras.



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AND
N.ANAND VENKATESH, J.

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