



H.C.P.No.1274 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 04.01.2023

CORAM

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

H.C.P.No.1274 of 2022

Louis Amirtharaj

.. 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 District Magistrate and District Collector,
Office of the District Magistrate and District Collector,
Thiruvallur District.

3.The Superintendent of Prison,
Central Prison, Puzhal,
Chennai - 2.

4.The Inspector of Police,
Gummidipoondi Circle,
Tiruvallur District.

.. Respondents



H.C.P.No.1274 of 2022

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

issue a WRIT OF HABEAS CORPUS to calling for the records relating to the detention order passed by the second respondent in detention order B.C.D.F.G.I.S.S.S.V.No.25/2022 dated 31.05.2022 and to quash the same and direct the respondents to produce the body or person of the detenu Edwinraj, S/o.Louis Amirtaraj, aged 24 years, before this Court and set him at liberty, now detained at the Central Prison, Puzhal II, Chennai.

For Petitioner : Mr.N.Nishar Ahamed

For Respondents : Mr.R.Muniyapparaj
Additional Public Prosecutor

ORDER

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

The petitioner is the father of the detenu viz., Edwinraj, S/o.Louis Amirtaraj, aged 24 years. The detenu has been detained by the 2nd respondent by his order in B.C.D.F.G.I.S.S.S.V.No.25/2022 dated 31.05.2022, holding him to be a "Drug Offender", as contemplated under Section 2(e) of Tamil Nadu Act 14 of 1982. The said order is under challenge in this Habeas Corpus Petition.



H.C.P.No.1274 of 2022

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. The learned Additional Public Prosecutor submitted that the detenu was arrested on 10.03.2022 and on completion of the investigation, final report was laid before the Special Court, (I Additional Court for the Exclusive Trial of Cases under the Narcotic Drugs and Psychotropic Substances Act, 1985), Chennai, on 19.08.2022 on time and the same was taken on file as C.C.No.187 of 2022.



5. 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.24 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 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.

6. 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



H.C.P.No.1274 of 2022

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.

In the result, the Habeas Corpus Petition is allowed and the order of detention in B.C.D.F.G.I.S.S.S.V.No.25/2022 dated 31.05.2022, passed by the second respondent is set aside. The detenu *viz.*, Edwinraj, S/o.Louis Amirtaraj, aged 24 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.,

04.01.2023



H.C.P.No.1274 of 2022

WEB COPY

To

- 1.The Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George, Chennai-9.
- 2.The District Magistrate and District Collector,
Office of the District Magistrate and District Collector,
Thiruvallur District.
- 3.The Superintendent of Prison,
Central Prison, Puzhal,
Chennai - 2.
- 4.The Inspector of Police,
Gummidipoondi Circle,
Tiruvallur District.
- 5.The Joint Secretary to Government,
Public, Law and Order Department,
Secretariat, Chennai-9.
- 6.The Public Prosecutor,
High Court, Madras.



WEB COPY



H.C.P.No.1274 of 2022

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

nsd

H.C.P.No.1274 of 2022

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