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H.C.P.No.1292 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.1292 of 2022

Dillip Kumar Jena

.. Petitioner

Vs.

1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George, Chennai-600 009.

2.The Commissioner of Police,
Greater Chennai.

3.The Superintendent of Prison,
Central Prison, Puzhal, Chennai - 66.

4.The Inspector of Police,
Anti Vice Squad - I,
(IC) Anti Vice Squad-II, Chennai.

.. Respondents

Petition filed under Article 226 of the Constitution of India, praying to
issue a WRIT OF HABEAS CORPUS calling for the records relating to the



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detention order passed by the second respondent pertaining to the order made in No.148/BCDFGISSSV/2022 dated 08.06.2022 in detaining the detenu under 2 (f) of Tamil Nadu Act 14 of 1982 as an Immoral Traffic Offender and quash the same and direct the respondents to produce the detenu Jyoti Ranjan Jena @ Rahul, S/o.Dilip Kumar Jena, aged about 30 years, who is detained at the Central Prison, Puzhal, before this Court and set him at liberty.

For Petitioner : Mr.J.William Shakesphere

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., Jyoti Ranjan Jena @ Rahul, S/o.Dilip Kumar Jena, aged about 30 years. The detenu has been detained by the 2nd respondent by his order in No.148/BCDFGISSSV/2022 dated 08.06.2022, holding him to be a "Immoral Traffic Offender", as contemplated under Section 2(g) 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. The learned Additional Public Prosecutor strongly opposed the habeas corpus petition by filing his counter.

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.1257 of the booklet, there is no proof to



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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 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



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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 No.148/BCDFGISSSV/2022 dated 08.06.2022, passed by the second respondent is set aside. The detenu *viz.*, Jyoti Ranjan Jena @ Rahul, S/o.Dilip Kumar Jena, aged about 30 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.,

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To

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Home, Prohibition and Excise Department,
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2.The Commissioner of Police,
Greater Chennai.

3.The Superintendent of Prison,
Central Prison, Puzhal, Chennai - 66.

4.The Inspector of Police,
Anti Vice Squad - I,
(IC) Anti Vice Squad-II, 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.

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