



H.C.P.No.1288 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.1288 of 2022

Tmt.G.Usha

.. Petitioner

Vs

- 1.The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai 600 009.
- 2.The Commissioner of Police,
Greater Chennai.
3. The Superintendent of Police,
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 to issue a writ of Habeas Corpus to call for the records relating to the detention order passed



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by the 2nd respondent pertaining to the order made in BCDFGISSSV/149/2022 dated 08.06.2022 in detain the detenue under 2(g) of Tamil Nadu Act 14/1982 as a Immoral Traffic Offender and Quash the same and direct the respondent to produce the detenue Krishna Chandra Swain S/o Bhubana Swain aged 27 years who is detained at Central Prison Puzhal before this Court and set him liberty.

For Petitioner : Mr.J.William Shakesphere

For Respondents : Mr.R.Muniyapparaj
Addl. Public Prosecutor

ORDER

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

The petitioner is the brother of the detenu *viz.*, Krishna Chandra, Age 27, S/o.Bhubana Swain. The detenu has been detained by the 2nd respondent by his order dated 08.06.2022 in BCDFGISSSV No.149/2022, holding him to be a "Immoral Traffic Offender", as contemplated under Section 3(1) 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 and we have also perused the records carefully.

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



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4. *Per contra*, the learned Additional Public Prosecutor would submit that the arrest of the detenu has been intimated to the relative of the detenu over phone. However, we find that there are no material particulars to substantiate the same. This Court has also taken the similar view in such cases that the detention order cannot be sustained.

5. As evidenced from the document in page No.645 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 relative 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



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obligation of the detaining authority to show that the impugned detention 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 BCDFGISSSV No.149/2022, dated 08.06.2022, passed by the 2nd respondent is set aside. The detenu viz., Krishna Chandra, Age 27, S/o.Bhubana Swain, 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.]

04.01.2023

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

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To

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High Court, Madras

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