



H.C.P.No.1322 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 10.01.2023

CORAM

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

H.C.P.No.1322 of 2022

A.Naseera

.. Petitioner

Vs.

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

2.The District Collector and District Magistrate,
Office of the District Collector,
Thiruvannamalai District, Thiruvannamalai-606 604.

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

4.The Superintendent of Prison,
Central Prison, Vellore,
Thorapadi, Vellore – 632 002.

5.The Inspector of Police,
Cheyyar Police Station,
Arcot Road – 604 407.

.. Respondents

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



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to issue a WRIT OF HABEAS CORPUS to call for the records related to the detention order dated 18.05.2022 passed by the second respondent herein in D.O.No.57/2022 -C2 and quash the same and direct the respondents herein to produce the petitioner's son *viz.* Shakil, S/o.Anwar, aged about 34 years, residing at No.19/2, Kalas Muslim Street, Kosapet, Vellore Town, Vellore District, under Section 3(1) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Cyber Law Offenders, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Sexual Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14/1982) 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 mother of the detenu *viz.*, Shakil, S/o.Anwar, aged about 34 years. The detenu has been detained by the 2nd respondent by his order in D.O.No.57/2022 -C2 dated 18.05.2022, 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.73 of the Booklet furnished to the detenu, that the arrest of the detenu has been intimated to the cousin of the detenu. However, there is no material to substantiate the service of arrest intimation stated to have been made to the cousin 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 cousin 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.73 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 cousin 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.No.57/2022 -C2 dated 18.05.2022, passed by the second respondent is set aside. The detenu *viz.*, Shakil, S/o.Anwar, aged about 34 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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WEB COPY To

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- 5.The Inspector of Police,
Cheyyar Police Station,
Arcot Road – 604 407.
- 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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