



DATED: 10.01.2023

**THE HONOURABLE MR. JUSTICE P.N.PRAKASH
and
THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH**

H.C.P.No.1344 of 2022

... Petitioner

Vs.

- 1.The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Fort St.George,
Chennai - 600 009.
- 2.The District Collector and District Magistrate,
Chengalpattu District,
Chengalpattu.
- 3.The Superintendent of Police,
Chengalpattu,
Chengalpattu District.
- 4.The Superintendent of Prison,
Women Special Prison, Puzhal,
Chennai District.



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5.State represented by its
The Inspector of Police,
Madhuranthagam Police Station,
Chengalpattu District.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus calling for the entire records relating to petitioner's daughter detention under Tamil Nadu Act 14 of 1982 vide detention order dated 03.07.2022 on the file of second respondent herein made in proceedings Memo CPT No.34/2022, quash the same as illegal and consequently, direct the respondents herein to produce the petitioner's wife, namely, Sarala W/o.Arumugam, aged 54 years, before this Court and set her at liberty from detention, now the petitioner's wife detained at Women Special Prison, Puzhal, Chennai.

For Petitioner : Mr.R.Sasikumar

For Respondents : Mr.R.Muniyapparaj
Additional Public Prosecutor

ORDER

[Made by **P.N.PRAKASH, J.**]

The petitioner is the husband of the detenue, Sarala W/o.Arumugam, aged 54 years. The detenue has been detained by the second respondent by his order in CPT No.34/2022 dated 03.07.2022, holding her to be a "Bootlegger", as contemplated under Section 2(b) 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 detaining authority has stated, in page No.105 of the Booklet furnished to the detainee, that the arrest of the detainee has been intimated to the daughter of the detainee. However, there is no material to substantiate the service of arrest intimation stated to have been made to the daughter of the detainee. Therefore, it is stated that the detainee 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 detainee has been intimated to the daughter of the detainee through SMS.

5. 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.

6. As evidenced from the document in page No.105 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 daughter of the detenu, 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 daughter of the detainee would amount to deprivation of the right of the detainee 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.



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7. 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 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 CPT No.34/2022 dated 03.07.2022, passed by the second respondent is set aside. The detinue, viz., Sarala W/o.Arumugam, aged 54 years, is directed to be released forthwith unless her detention is required in connection with any other case.

[PNP, J.] [NAV, J.]
10.01.2023

Index: Yes/No
gm



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P.N.PRAKASH, J.
and
N.ANAND VENKATESH, J.
gm

To

- 1.The Secretary to Government,
Home, Prohibition and Excise Department,
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Chengalpattu District,
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Women Special Prison, Puzhal,
Chennai District.
- 5.The Inspector of Police,
Madhuranthagam Police Station,
Chengalpattu District.
- 6.The Joint Secretary to Government of Tamil Nadu,
Public, Law and Order Department,
Secretariat, Chennai – 9.
- 7.The Public Prosecutor,
High Court, Madras.

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