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H.C.P.No.1509 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**

Habeas Corpus Petition No.1509 of 2022

G.Kalpanadevi,
W/o Gunavel

..... Petitioner

-Versus-

- 1.The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Fort St. George, Chennai 600 009.
- 2.The Commissioner of Police /
Detaining Authority,
Greater Chennai,
Vepery, Chennai.
- 3.The Additional Superintendent of Police,
Central Prison-II,
Puzhal, Chennai.
- 4.The Inspector of Police Team-4,
EDF-II, CCB-II cum Sponsoring Authority,
Vepery, Chennai.

.... Respondents



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Petition filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus calling for the records in connection with detention order passed by the 2nd respondent dated 23.06.2022 made in proceedings in BCDFGISSSV.167/2022 against the petitioner's son, namely, Ponraj S/o Gunavel, aged 36 years, before this court and set him at liberty forthwith.

For Petitioner : Mrs.R.Subathra Devi

*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., Ponraj S/o Gunavel, aged 36 years. The detenu has been detained by the second respondent by his order in BCDFGISSSV No.167/2022 dated 23.06.2022, 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.



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



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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.135 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 mother 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 mother 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.

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



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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.167/2022 dated 23.06.2022 passed by the second respondent is set aside. The detenu viz., Ponraj S/o Gunavel, aged 36 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

Index: Yes/No
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P.N.PRAKASH.J.,
AND
N.ANAND VENKATESH.J.,

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To

- 1.The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Fort St. George, Chennai 600 009.
- 2.The Commissioner of Police /
Detaining Authority,
Greater Chennai,
Vepery, Chennai.
- 3.The Additional Superintendent of Police,
Central Prison-II,
Puzhal, Chennai.
- 4.The Inspector of Police Team-4,
EDF-II, CCB-II cum Sponsoring Authority,
Vepery, Chennai.
- 5.The Joint Secretary to Government of Tamil Nadu,
Public, Law and Order Department,
Secretariat, Chennai – 9.
- 6.The Public Prosecutor,
High Court, Madras.

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