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HCP No.1482 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.1482 of 2022

Shivnathdass
S/o.Nathu Das

... Petitioner

Vs.

1.State of Tamil Nadu
represented by the
Secretary, Home, Prohibition
and Excise Department,
Fort St.George, Chennai - 600 009.

2.The District Magistrate & District Collector,
Erode District, Erode.

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

4.The Superintendent of Prison,
Central Prison, Coimbatore.

5.The Inspector of Police,
Modakurichi Police Station,
Erode District.

... Respondents



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Writ Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus calling for the records relating to the detention order in Cr.M.P.No.18/Goonda/2022 C1, dated 16.06.2022 passed by the second respondent under the Tamil Nadu Act 14 of 1982 and set aside the same and direct the respondents to produce the petitioner's son Anilkumar S/o.Shivnathdass, aged about 20 years, the detenu, now confined at Central Prison, Coimbatore, before this Court and set him at liberty.

For Petitioner : Mr.M.Subash

For Respondents : Mr.R.Muniyapparaj
Additional Public Prosecutor

ORDER

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

The petitioner is the father of the detenu, Anilkumar S/o.Shivnathdass, aged about 20 years. The detenu has been detained by the second respondent by his order in Cr.M.P.No.18/Goonda/2022 C1, dated 16.06.2022, 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.

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. On a perusal of the booklet, we find that there is no proof to 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



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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.

5. 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 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 Cr.M.P.No.18/Goonda/2022 C1, dated 16.06.2022, passed by the second respondent is set aside. The detenu, viz., Anilkumar



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S/o.Shivnathdass, aged about 20 years, is directed to be released forthwith unless his detention is required in connection with any other case.

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

Index: Yes/No
gm

To

- 1.The Secretary, Home, Prohibition
and Excise Department,
Fort St.George, Chennai - 600 009.
- 2.The District Magistrate & District Collector,
Erode District, Erode.
- 3.The Superintendent of Police,
Erode District, Erode.
- 4.The Superintendent of Prison,
Central Prison, Coimbatore.
- 5.The Inspector of Police,
Modakurichi Police Station,
Erode 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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