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H.C.P.No.1641 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.03.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

H.C.P.No.1641 of 2022

Roobi
W/o.Murugan

.. Petitioner

Vs.

1. State of Tamil Nadu
Rep. by the Additional Chief Secretary to Government
Home, Prohibition and Excise Department
Fort St.George, Chennai-600 009.
2. The Commissioner of Police
Office of the Commissioner of Police
Avadi City, Chennai-600 054.
3. The Superintendent of Prison
Central Prison, Puzhal,
Chennai-600 066.
4. The Inspector of Police
B-4, Sevvapet Police Station
Thiruvallur District.

.. Respondents



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Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus to call for the records relating to the detention order in Memo No.95/BCDFGISSSV/2022, dated 05.08.2022 passed by the 2nd respondent under the Tamil Nadu Act 14 of 1982 and set aside the same and direct the respondents to produce the petitioner's son Ajith Kumar, s/o. Murugan aged about 27 years the detenu, now confined in Central Prison, Puzhal, Chennai before this Hon'ble Court and set the petitioner's son Ajith Kumar, s/o.Murugan aged about 27 years the detenu herein at liberty.

For Petitioner	:	Mr.S.Senthilvel representing Ms.BGopi Latha
For Respondents	:	Mr.R.Muniyapparaj Additional Public Prosecutor assisted by Mr.M.Sylvester John, Advocate

ORDER

[Order of the Court was made by N.ANAND VENKATESH, J.,]

Captioned 'Habeas Corpus Petition' ['HCP' for the sake of brevity] has been filed by mother of detenu assailing a 'preventive detention order dated 05.08.2022 bearing reference No.95/BCDFGISSSV/2022' [hereinafter 'impugned detention order' for the sake of convenience and brevity]. To be noted, fourth respondent is the sponsoring authority and second respondent

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is the detaining authority as the impugned detention order has been made by second respondent.

2. Impugned detention order has been made under '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 No.14 of 1982)' [hereinafter 'Act 14 of 1982' for the sake of convenience and clarity] on the premise that the detenu is a 'Goonda' within the meaning of Section 2(f) of Act 14 of 1982.

3. There are two adverse cases and one ground case. The ground case which is the sole substratum of the impugned detention order is Crime No.226 of 2022 on the file of B-4 Sevvapet Police Station for the alleged offences under Sections 341, 324 and 302 of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity].



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4. Mr.S.Senthilvel, learned counsel representing the counsel on record for petitioner and Mr.R.Muniyapparaj, learned State Additional Public Prosecutor assisted by Mr.M.Sylvester John, learned counsel for all respondents are before us.

5. The main ground that was raised by the learned counsel for the petitioner is that the arrest of the detenu was not intimated to his near relatives and hence, there is statutory violation which vitiates the impugned detention order passed by the second respondent. To substantiate the same, learned counsel brought to our notice the Arrest Intimation Form (Page No.65 of the booklet).

6. The detenu was arrested in the course of investigation in Crime No.226 of 2022 on 19.07.2022. It is seen from column No.12 of the Arrest Intimation Form that the person to whom the information has been given is an Advocate named Mr.Vignesh. Insofar as the signature of the witness is concerned, it is blank. We do not find any signature. There is mention about a mobile number to which SMS was sent and that Mobile Number is



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9514888646. There is absolutely no material to show that the mobile number referred to in the Arrest Intimation Form belonged to the Advocate whose name has been mentioned in column No.12 of Arrest Intimation Form. This is apart from the fact that no witness signature is found in the Arrest Intimation Form. In view of the same, we have to come to the conclusion that after the arrest of the detenu, the same was not intimated to any near relatives and hence, the arrest suffers from statutory violation. On this ground, the impugned detention order passed by the second respondent / Detaining Authority is liable to be interfered with by this Court.

7. The learned Additional Public Prosecutor, on instructions submitted that the detenu was arrested on 19.07.2022 and investigation was completed and final report was filed before the learned Judicial Magistrate No.I, Tiruvallur and the same was taken on file in PRC.No.88 of 2022. The learned Additional Public Prosecutor submitted that the investigation is at the stage of appearance of the accused for receiving copies. Recording the submission of learned Additional Public Prosecutor, we make it clear that if any bail application is filed by the detenu, the same will be considered on its



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own merits and in accordance with law and the order passed in this HCP will not have any bearing.

8. Before concluding, we also remind ourselves that preventive detention is not a punishment and HCP is a high prerogative writ.

9. Apropos, the sequitur is, captioned HCP is allowed. Impugned detention order dated 05.08.2022 bearing reference No.95/BCDFGISSSV/2022 made by the second respondent is set aside and the detenu Mr.Ajithkumar, aged 27 years, son of Mr.Murugan is directed to be set at liberty forthwith, if not required in connection with any other case / cases. There shall be no order as to costs.

(M.S.,J.)

(N.A.V.,J.)

21.03.2023

Index : Yes

Speaking

Neutral Citation : Yes / No

mk

P.S: Registry to forthwith communicate this order to Jail authorities in Central Prison, Puzhal, Chennai.

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5. The Public Prosecutor
High Court, Madras.



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