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H.C.P.No.1769 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.03.2023

CORAM

THE HONOURABLE MR.JUSTICE **M.SUNDAR**
and
THE HONOURABLE MR.JUSTICE **M.NIRMAL KUMAR**

H.C.P.No.1769 of 2022

P.Radhamaniyamma

.. Petitioner

Vs

1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George, Chennai - 9.

2.The Commissioner of Police,
Greater Chennai, Vepery, Chennai.

3.The Superintendent,
Central Prison, Puzhal, Chennai.

4.The Inspector of Police,
Central Crime Branch I,
Job Racket Wing, Vepery, Chennai.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus to call for the records in connection with the order of detention passed by the second respondent in detention order vide D.O.No.244/BCDFGISSSV/2022 dated 12.08.2022 against the detenu Binu Kumaran Nair @ Rajagopal, S/o.Vasudevan Nair confined at Central Prison, Puzhal, Chennai and set aside the same, consequently direct the respondents to produce the

Page Nos.1/7



H.C.P.No.1769 of 2022

body of the detenu Binu Kumaran Nair @ Rajagopal, S/o. Vasudevan Nair before this Court and set him at liberty.

For Petitioner : Mr.V.Paarthiban
for Mr.R.Sasikumar

For Respondents : Mr.R.Muniyapparaj
Additional Public Prosecutor
assisted by Mr.M.Sylvester John

ORDER

[Order of the Court was made by **M.NIRMAL KUMAR, J.,**]

Captioned 'Habeas Corpus Petition' ['HCP' for the sake of brevity] has been filed by mother of detenu assailing a 'preventive detention order dated 12.08.2022 bearing reference No.244/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 is the detaining authority as 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



H.C.P.No.1769 of 2022

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. The ground case which is the sole substratum of the impugned detention order is Crime No.123 of 2022 on the file of Job Racket Wing Central Crime Branch I for alleged offences under Sections 406, 420 read with 34 of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity]. Owing to the nature of the challenge to the impugned detention order, it is not necessary to delve into the factual matrix or be detained further by facts.

4. Mr.V.Paarthiban, learned counsel representing 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.



H.C.P.No.1769 of 2022

5. Though several points have been raised by the petitioner, learned counsel for the petitioner submits that the sponsoring authority has stated in the Arrest Memo at page No. 1049 of the Booklet furnished to the detenu, that the arrest of the detenu has been intimated to the wife of the detenu. However, there is no material to substantiate the service of arrest intimation stated to have been made to the wife 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.

6. Per contra, the learned Additional Public Prosecutor would submit that the arrest of the detenu has been intimated to the wife of the detenu through SMS to the mobile number 9884940805. 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.



H.C.P.No.1769 of 2022

7. As evidenced from the document in page No.1049 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 wife 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.

8. 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.



H.C.P.No.1769 of 2022

9. Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 12.08.2022 bearing reference No.244/BCDFGISSSV/2022 made by the second respondent is set aside and the detenu Thiru.Binu Kumaran Nair @ Rajagopal, male, aged 48 years, son of Thiru.Vasudevan Nair 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.) (M.N.K.,J.)
27.03.2023

Index : Yes / No

Neutral Citation : Yes / No

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

To

1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George, Chennai - 9.

2.The Commissioner of Police,
Greater Chennai, Vepery, Chennai.

3.The Superintendent,
Central Prison, Puzhal, Chennai.

4.The Inspector of Police,
Central Crime Branch I,
Job Racket Wing, Vepery, Chennai.

5.The Public Prosecutor, High Court, Madras.

Page Nos.6/7



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H.C.P.No.1769 of 2022

**M.SUNDAR, J.,
and
M.NIRMAL KUMAR, J.,**

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H.C.P.No.1769 of 2022

27.03.2023

Page Nos.7/7