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H.C.P.No.1808 of 2022

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.03.2023

CORAM

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

H.C.P.No.1808 of 2022

Kalaivani
W/o.Pandiyan

.. Petitioner/Mother of detenu

Vs

1. The Secretary to Government (Home),
Prohibition and Excise Department,
Government of Tamil Nadu,
Fort St. George,
Chennai - 600 009.
2. The Commissioner of Police,
Office of the Commissioner of Police,
Avadi City.
3. The Inspector of Police,
Sevvapet Police Station,
Thiruvallur District.
4. The Superintendent,
Central Prison, Puzhal,
Chennai 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 pursuant to the order in Memo No.94/BCDFGISSSV/2022 dated 05.08.2022 passed by the 2nd respondent and quash the same consequently produce the detenu Dhanush @ Stalin aged about 22 years, S/o.Pandiyan before this Court and set him liberty, the detenu is now confined in Central Prison, Puzhal, Chennai District.

For Petitioner : Mr.D.Arun

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

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 05.08.2022 bearing reference 94/BCDFGISSSV/2022' [hereinafter 'impugned detention order' for the sake of convenience and brevity]. To be noted, third respondent is the sponsoring authority and second respondent is the detaining authority as impugned detention order has been made by second respondent.



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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 one adverse case and one ground case. The ground case which is the substratum of the impugned detention order is Crime No.225 of 2022 on the file of B-4 Sevvapet Police Station for alleged offences under Sections 294(b), 427, 336, 392 read with 397 and 506(ii) 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.



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4. Mr.D.Arun, learned counsel 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 contention of the petitioner is that in the Arrest Intimation Form there is no signature of the witness though it says that SMS has been sent to a particular mobile number. He further submitted that the mobile number shown in the Arrest Intimation Form has not been confirmed to be that of the family members of the detenu. This point is also raised in one of the representation. Referring to Page No.102 (Statement) and Page No.103 (Special Report) of grounds of detention booklet, learned counsel submitted that though it has been projected that a statement under section 161(3) Cr.P.C. of the petitioner has been recorded to show that steps have been taken to move bail application, no such statement has been given.

6. In contra, learned Additional Public Prosecutor submits that the statement of parents of the detenu had been recorded, wherein they have confirmed about steps being taken for bail on behalf of the detenu. Further, a Special Report confirms that the family members of the detenu are taking



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steps for bail. Thereafter the detaining authority has passed the impugned detention order.

7. On a perusal of the booklet served to the petitioner, it is seen that there is no date in both statement said to have been taken from the mother of the detenu as well as the special report, to show that on which date the statement has been recorded. In view of the same, the statement and the Special Report saying that the relatives of the detenu are taking steps to file bail application cannot be reliable as they are undated. Further, the statement and Special Report also do not make any reference that the mobile number found in the Arrest Intimation Form belong to the father of the detenu.

8. The Hon'ble Division Bench of this Court in the case of ***“Akilandeswari Vs. State, rep. by Secretary to Government, Home, Prohibition and Excise Department, Chennai-600009, reported in 2008 (3) MLJ (Crl.) 744”***, held as follows:

“5. Though the learned Additional Public Prosecutor has made an attempt to justify by stating that the family members were intimated through telegrams, he has not placed any material to satisfy this Court as to whether any telegram



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was sent and the same was acknowledged either by the family members or relatives of the detenu. A right of intimation to the relatives or family members of the detenu encompasses itself the fundamental right guaranteed under Article 22(5) of the Constitution of India to make a representation to the Detaining Authority or the State Government, as the case may be. In the event the arrest is not intimated, the detenu would not be in a position to make any such representation and in that context, failure on the part of the Detaining Authority would amount to deprivation of the right of the detenu to make an effective representation guaranteed under Article 22(5) of the Constitution of India. On the facts of this case, a specific averment has been made that the intimation was not given. We also find that the said averment has not been controverted in the Counter Affidavit. Though the learned Additional Public Prosecutor submitted that the family members of the detenu were informed of the arrest through telegram, there are no materials placed before us to substantiate the said contention. Further, the copy of the telegram has also not been furnished to the detenu. In the absence of the same, we are unable to accept the contention of the learned Additional Public Prosecutor that the family members or the relatives of the detenu were informed of the arrest. Under these circumstances, the detention order is vitiated.”



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9. Following *Akilandeswari* Case (cited supra), this Court in the case of “*Ganesh @ Lingesan Vs. State of Tamil Nadu and another* reported in *2012 (3) MWN (Cr.) 315 DB*”, in paragraph No.10, held as follows:

“10. “No man shall be deprived of his life and liberty except by procedure established by law” has been guaranteed in Article 21 of the Constitution of India. His right to be informed of the arrest is his basic human right. Curtailment of his personal freedom in pursuance of a preventive detention law though has the constitutional sanction (see Article 22(3)(b) of the Constitution of India), it is conditioned by many constraints, one of which is a chance for him to make representation as against his detention. (see Article 22(5) of the Constitution of India). If his arrest is not informed to his dear and near ones, who could make representation as against the detention order on his behalf, he cannot exercise the right given to him under Article 22(5) of the Constitution of India. In this constitutional perspective, the argument of the Respondent that by non-supply of a copy of the telegram informing his arrest no prejudice is caused to the detenu is too big a pill to gulp.”

10. In this case, the arrest intimation is through Short Message Service (SMS). The reason given is not acceptable, proper intimation has to be given to the detenu and the detenu must know the reason for his arrest. Further,



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right of the detenu to make an effective representation qua the preventive detention order is a Constitutional safeguard ingrained in Clause (5) of Article 22 of the Constitution of India. In the light of the narrative thus far, this Constitutional safeguard is hampered. The sequitur is, the impugned preventive detention order deserves to be dislodged.

11. Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 05.08.2022 bearing reference 94/BCDFGISSSV/2022 made by the second respondent is set aside and the detenu Thiru.Dhanush @ Stalin aged 22 years, son of Thiru.Pandiyan, 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.)

28.03.2023

(2/2)

Index : Yes / No

Speaking / non-speaking

Neutral Citation : Yes / No

rsi

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

To



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1. The Secretary to Government (Home),
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Chennai - 600 009.
2. The Commissioner of Police,
Office of the Commissioner of Police,
Avadi City.
3. The Inspector of Police,
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4. The Superintendent,
Central Prison, Puzhal,
Chennai District.
5. The Public Prosecutor,
High Court, Madras.



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

rsi

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**28.03.2023
(2/2)**