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H.C.P.No.2110 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.04.2023

Coram

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

H.C.P.No.2110 of 2022

Nagammal
W/o.Marimuthu

.. Petitioner/Mother of detenu

Vs.

1.State of Tamilnadu,
Rep by The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George,
Chennai -600 009.

2.The Commissioner of Police,
Tambaram City,
Tambaram, Chennai – 600 045.

3.The Superintendent of Prison,
Central Prison, Puzhal,
Chennai – 600 066.

4.The Inspector of Police,
T-11, Somangalam Police Station,
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 relating to the detention order in Memo No.138/BCDFGISSSV/2022, dated 12.09.2022



H.C.P.No.2110 of 2022

passed by the second respondent under the Tamilnadu Act 14 of 1982 and set aside the same and direct the respondents to produce the petitioner's son Selvam @ Kari, son of Marimuthu, aged about 23 years the detenu, now confined in Central Prison, Puzhal, Chennai before this Court and set the petitioner's son Selvam @ Kari, son of Marimuthu aged about 23 years the detenu herein at liberty.

For Petitioner	:	Mr.S.Senthilvel for Mr.B.Gopi Latha
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' [hereinafter 'HCP' for the sake of convenience and brevity] has been filed by mother of the detenu assailing 'detention order dated 12.09.2022 bearing reference BCDFGISSSV No.138/2022' [hereinafter 'impugned detention order' for the sake of convenience]. To be noted, the fourth respondent is the sponsoring authority and the second respondent is the detaining authority as impugned detention order has been made by the second respondent.



H.C.P.No.2110 of 2022

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 three adverse cases and one ground case. The ground case which is the substratum of the impugned detention order is Crime No.164 of 2022 on the file of T-11, Somangalam Police Station for an alleged offence under Section 392 @ 397 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.S.Senthilvel, learned counsel representing the counsel on record for petitioner and Mr.R.Muniyapparaj, learned Additional Public Prosecutor assisted by Mr.M.Sylvester John learned counsel for all respondents are before us.



WEB COPY 5. Learned counsel for petitioner predicated his campaign against the impugned detention order on one short point and that is, in the Arrest Intimation Form it is recorded that the arrest of the detenu was informed to his wife one Tmt.Srimathi through her mobile bearing No.8939453018 by way of SMS. He further submitted that this would not be a proper communication of arrest, more so, there is no statement recorded from the said Tmt.Srimathi to confirm as to whether she received the arrest intimation, thereby hampered the right of the detenu to make an effective representation.

6. The learned Additional Public Prosecutor submitted that the petitioner has not made any such representation now putforth before this Court. Hence, the above contention may not be considered.

7. 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 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.”



H.C.P.No.2110 of 2022

8. 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.”

9. 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, right of the detenu to make an effective representation qua the preventive detention order is a Constitutional safeguard ingrained in Clause (5) of



H.C.P.No.2110 of 2022

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.

10. Ergo, the sequitur is, captioned HCP is allowed and the detention order dated 12.09.2022 bearing reference BCDFGISSSV No.138/2022 made by the second respondent is set aside and the detenu Thiru.Selvam @ Kari, aged 23 years, son of Thiru.Marimuthu is directed to be set at liberty forthwith unless required in connection with any other case. There shall be no order as to costs.

(M.S,J.) (M.N.K.,J.)
18.04.2023

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.



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H.C.P.No.2110 of 2022

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

rsi

To

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Fort St. George,
Chennai -600 009.
- 2.The Commissioner of Police,
Tambaram City,
Tambaram, Chennai – 600 045.
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T-11, Somangalam Police Station,
Chennai.
- 5.The Public Prosecutor,
High Court of Madras, Chennai - 104.

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