



H.C.P.No.2084 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.04.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

H.C.P.No.2084 of 2022

Easwari
W/o.Elumalai

.. Petitioner

Vs.

1. State of Tamil Nadu
Represented by its Secretary to Government
Home, Prohibition and Excise Department
Secretariat, Chennai-600 009.
2. The District Collector and
District Magistrate
Ranipet District, Ranipet.
3. The Superintendent of Police
O/o. Superintendent of Police
Ranipet District.
4. The Superintendent of Prison
Central Prison
Salem.
5. State rep. by

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The Inspector of Police
Arakkonam Taluk Police Station
Ranipet District.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus to call for the entire records, relating to the petitioner's son detention under Tamil Nadu Act 14 of 1982 vide detention order dated 23.09.2022 on the file of second respondent herein and made in proceedings B3/D.O.No.51/2022 and quash the same as illegal and consequently, direct the respondents herein to produce the petitioner's son namely Srinivsan @ Seenu, S/o.Elumalai, aged about 23 years before this Hon'ble High Court and set the petitioner's son at liberty from detention, now the petitioner's son detained in Central Prison, Salem.

For Petitioner	:	Mr.R.Prathap Kumar
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 the detenu assailing a 'preventive detention order dated 23.09.2022 bearing reference B3/D.O.No.51/2022' [hereinafter



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'impugned detention order' for the sake of convenience and brevity]. To be noted, fifth respondent is the sponsoring authority and second respondent 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 'Drug Offender' within the meaning of Section 2(e) of Act 14 of 1982.

3. There is one adverse case and one ground case. The ground case which is the sole substratum of the impugned detention order is Crime No.232 of 2022 on the file of Arakkonam Taluk Police Station for alleged offences under Section 8(c) read with Section 20(b)(ii)(B) of 'the Narcotic Drugs and Psychotropic Substances Act, 1985' [hereinafter 'NDPS Act' for



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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.R.Prathap Kumar, learned 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. 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 has been recorded that the arrest of the detenu was informed to his mother one Ms.Eshwari by way of SMS but there is no material to show that the mobile number [9489345075] referred to in the arrest intimation form belongs to Eshwari. He further submitted that this would not be a proper communication of arrest, more so, there is no statement recorded from the said Eshwari to confirm as to whether she received the arrest intimation and there is also no signature of the witness in the arrest intimation form, thereby hampered the right of the detenu to make



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an effective representation.

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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.”

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



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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). There is no material to show that the mobile number referred to in the arrest intimation form belongs to the mother of the detenu. Hence, 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.



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

11. Apropos, the sequitur is, captioned HCP is allowed. Impugned detention order dated 23.09.2022 bearing reference B3/D.O.No.51/2022 made by the second respondent is set aside and the detenu Thiru.Srinivasan @ Seenu, aged 23 years, son of Thiru.Elumalai, 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.)

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Index : Yes / No

Speaking / Non-speaking

Neutral Citation : Yes / No

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



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Arakkonam Taluk Police Station
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6. The Public Prosecutor
High Court, Madras.



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

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