



H.C.P.No.1847 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.11.2023

CORAM :
THE HON'BLE MR. JUSTICE S.S.SUNDAR

AND

THE HON'BLE MR.JUSTICE SUNDER MOHAN

H.C.P.No.1847 of 2023

Amirthalingam

..

Petitioner

v.

1. The Additional Chief Secretary to Government
Home, Prohibition and Excise Department
Secretariat, Chennai 600 009

2.The District Collector and District Magistrate
Office of the District Collector
Cuddalore 607 001.

3.The Superintendent of Police
O/o.The Superintendent of Police
Cuddalore 607 001.

4.The Superintendent of Prison
Central Prison, Cuddalore 607 401/

5.The Inspector of Police
Muthandikuppam Police Station
Coimbatore 607 805.

.. Respondents



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Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Habeas Corpus, calling for the entire records connected with the detention order of the 2nd respondent in C3/D.O/25/2023 dated 14.06.2023 and quash the same and direct the respondents to produce the body and person of detenu namely Akilan son of Amirthalingam aged about 23 years detained in Central Prison, Cuddalore, before this Court and set him at liberty forthwith.

For Petitioner : Mr.B.M.Santharam

For Respondents : Mr.E.Raj Thilak
Additional Public Prosecutor
assisted by Mr.Aravind.C.

ORDER

[Order of the Court was made by S.S.SUNDAR,J.]

- (1)The petitioner, who is the father of the detenu, namely, Akilan, aged 23 years, has come forward with this petition challenging the detention order passed by the 2nd respondent dated 14.06.2023 slapped on his son branding him as 'Goonda' under the Tamil Nadu Act 14 of 1982.
- (2)Heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the respondents.
- (3)Though several grounds are raised in the petition, learned counsel appearing for the petitioner confined his argument to the point that there is a delay in furnishing the grounds of detention to the detenu.



H.C.P.No.1847 of 2023

(4) It is seen that the Booklet was served on the detenu only on 19.06.2023.

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This fact is not disputed by the learned Additional Public Prosecutor appearing for the respondents.

(5) In view of the judgment of the Hon'ble Supreme Court in ***Enforcement Directorate, Government of India Vs. Kapil Wadhwan and Another*** reported in ***2023 SCC Online SC 972***, this Court is inclined to hold that while computing the period of five days for serving the Grounds of Detention and the material documents in the form of Booklet to the detenu, the date of Detention Order should be included. In the aforesaid case, the Hon'ble Supreme Court was dealing with the question as to whether the date of remand should be included for the purpose of computing the statutory period of 60/90 days for applying the provisions of Section 167[2] of Cr.P.C. The Hon'ble Supreme Court held that the date of remand should be included while considering the said period. The said principle can be applied to this case also. In the instant case, the detention order was passed on 14.06.2023. The Booklet containing the materials relied upon by the detaining authority for the detention ought to have been supplied on or before 18.06.2023, as per the mandate of



H.C.P.No.1847 of 2023

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Section 8 of Act 14 of 1982. However, it was supplied only on 19.06.2023, which is a violation of the constitutional and the statutory right.

(6) It is to be noted that by virtue of Article 22(5) of the Constitution of India, when a person is detained under any law providing for preventive detention, the authority passing the order is required to communicate the grounds on which the order was passed. It is only in terms of Article 22(5) of the Constitution, Section 8 of the 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 14 of 1982) has made it mandatory on the part of the detaining authority to communicate the grounds of detention to the detenu within five days from the date of his detention. In this case, as admitted by the respondents, the mandatory requirement is not satisfied and therefore the order of detention is liable to be quashed.

(7) In view of the aforesaid reason, the detention order passed by the 2nd respondent dated 14.06.2023 in C3/D.O/25/2023 is hereby set aside and



H.C.P.No.1847 of 2023

the habeas corpus petition is allowed. The detenu is directed to be set at

liberty forthwith, unless he is required in connection with any other case.

[SSSRJ] SMJ]
16.11.2023

AP
Internet: Yes



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6. The Public Prosecutor
High Court, Madras



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H.C.P.No.1847 of 2023

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H.C.P.No.1847/2023

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