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H.C.P.No.2259 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.04.2023

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

**H.C.P.No.2259 of 2022**

Sumaya

W/o.Kadhar Hussain

.. Petitioner/Wife of detenu

Vs.

1. The Secretary to Government of India,  
Ministry of Home Affairs,  
Department of Internal Security,  
North Block, New Delhi – 110 001.
2. The Secretary to Government,  
Public (Law and Order-F) Department,  
Government of Tamilnadu,  
Secretariat, Chennai – 600 009.
3. The Commissioner of Police,  
O/o.The Commissioner of Police,  
Linemedu, Salem District – 636 006.
4. The Superintendent of Prison,  
Salem Central Prison, Hasthampatty,  
Salem District.
5. The Inspector of Police,  
Ammamet Police Station,  
Salem 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 entire records connected with the detention order in C.No.2/NSA/S.C/2022 dated 15.10.2022 on the file of the 3<sup>rd</sup> respondent and quash the same and direct the respondents to produce the body and person of the petitioner's husband, namely, Thiru.Kadhar Hussain, son of Kaja Maideen, aged about 33 years now confined at Central Prison, Salem before this Court and set him at liberty forthwith.

For Petitioner : Mr.A.Rajamohamed

For Respondent-1 : Mr.Rajesh Vivekananthan  
Deputy Solicitor General of India  
[Madras High Court]

For Respondents-2 to 5 : 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 wife of detenu assailing 'detention order dated 15.10.2022 bearing reference No.C.No.2/NSA/S.C/2022' [hereinafter 'impugned detention order' for the



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sake of convenience]. To be noted, the fifth respondent is the sponsoring authority and the third respondent is the detaining authority as impugned detention order has been made by the third respondent.

2. Impugned detention order has been made under 'The National Security Act, 1980 (Central Act 65 of 1980)' [hereinafter 'NSA Act' for the sake of convenience and clarity] on the premise that the detenu's activities were prejudicial to the maintenance of public order within the meaning of Section 3(2) of NSA Act.

3. There is no adverse case. The ground case which is the sole substratum of the impugned detention order is Crime No.518 of 2022 on the file of Ammapet Police Station for alleged offences under Sections 153A, 436 and 511 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.A.Rajamohamed, learned counsel for petitioner, Mr.Rajesh Vivekananthan, learned Deputy Solicitor General of India [Madras High



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Court] for first respondent and Mr.R.Muniyapparaj, learned Additional Public Prosecutor assisted by Mr.M.Sylvester John, learned counsel for respondents 2 to 5 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 is recorded that the arrest of the detenu was informed to his wife one Ms.Sumaya through her mobile bearing No.7373336668 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 Ms.Sumaya 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:

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*“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*



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*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 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



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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 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 15.10.2022 bearing reference C.No.2/NSA/S.C/2022 made by the third respondent is set aside and the detenu Thiru.Kadhar Hussain, aged 33 years, son of Thiru.Kaja Maideen 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, Salem.**



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

rsi

To

1. The Secretary to Government of India,  
Ministry of Home Affairs,  
Department of Internal Security,  
North Block, New Delhi – 110 001.
2. The Secretary to Government,  
Public (Law and Order-F) Department,  
Government of Tamilnadu,  
Secretariat, Chennai – 600 009.
3. The Commissioner of Police,  
O/o.The Commissioner of Police,  
Linemedu, Salem District – 636 006.
4. The Superintendent of Prison,  
Salem Central Prison, Hasthampatty,  
Salem District.
5. The Inspector of Police,  
Ammamet Police Station,  
Salem District.
6. The Public Prosecutor,  
High Court of Madras, Chennai - 104.

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