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HCP No.2307 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.04.2023

Coram

The Hon'ble Mr. Justice **M.SUNDAR**
and

The Hon'ble Mr. Justice **M.NIRMAL KUMAR**

H.C.P. No.2307 of 2022

Nagaraj

.. Petitioner

Vs.

1.State rep. by

The Principal Secretary to Government,
Home, Prohibition and Excise Department,
Government of Tamil Nadu,
Secretariat, Fort St. George,
Chennai -600 009.

2.The Commissioner of Police,
Avadi City.

3.The Superintendent,
Central Prison, Puzhal-II,
Chennai.

4.The Inspector of Police,
T-1 Ambattur Police Station,
Chengalpattu.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying



HCP No.2307 of 2022

for issuance of a writ of habeas corpus to call for the records pertaining to the order of detention dated on 26.08.2022 passed by the 2nd respondent in No.105/BCDFGISSSV/2022 and quash the same as illegal and direct the respondent to produce the detenu Ganesh Kumar @ Ganesh S/o.Nagaraj male aged about 30 years now confined in Central prison, Puzhal, Chennai

For Petitioner : Mr.S.Senthil Kumar
For Respondents : Mr.R.Muniyapparaj
Additional Public Prosecutor
Assisted by Mr.M.Sylvester John

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 the father of the detenu assailing 'detention order dated 26.08.2022 bearing reference No.105/BCDFGISSSV/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.



HCP No.2307 of 2022

WEB COPY

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 eight adverse cases. The ground case which is the sole substratum of the impugned detention order is Crime No.516 of 2022 on the file of T-1 Ambattur Police Station for alleged offences under Sections 341, 294(b), 323, 392, 397, 336, 427 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.

4. Mr. S. Senthil Kumar, learned counsel for petitioner and



HCP No.2307 of 2022

Mr.R.Muniyapparaj, learned Additional Public Prosecutor assisted by

Mr.M.Sylvester John learned counsel for 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 is recorded that the arrest of the detenu was informed to his cousin one Tmt.Saraswathi by way of SMS. He further submitted that this would not be a proper communication of arrest, more so, no signature of the detenu's cousin is found and further there is no material to show that mobile number found therein belongs to the detenu's cousin, 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,***



HCP No.2307 of 2022

Prohibition and Excise Department, Chennai-600009, reported in 2008

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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 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.



HCP No.2307 of 2022

(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 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 26.08.2022 bearing reference No.105/BCDFGISSSV/2022



HCP No.2307 of 2022

made by the second respondent is set aside and the detenu

Thiru.Ganeshkumar @ Ganesh, aged 30 years, son of Thiru.Nagaraj 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.)

03.04.2023

Index : Yes / No

Speaking / Non-speaking

Neutral Citation : Yes / No

cse

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



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HCP No.2307 of 2022

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

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H.C.P.No.2307 of 2022

03.04.2023