



WEB COPY



H.C.P.No.2328 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.2328 of 2022

Mohana

W/o.Thyagarajan

.. Petitioner/Mother of detenu

Vs.

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

2.The Commissioner of Police,
Greater Chennai, Vepery,
Chennai – 600 007.

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

4.The Assistant Commissioner of Police,
Arumbakkam Range,
Chennai.

5.The Inspector of Police (Crime),
K-8, Arumbakkam Police Station,
Chennai.

.. Respondents



H.C.P.No.2328 of 2022

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus to call for the records in connection with the detention order passed by the 2nd respondent in No.326/BCDFGISSSV/2022 dated 20.09.2022 against the petitioner's son Srivatsan @ Srivarsan, son of Thyagarajan, who is detained in Central Prison-II, Puzhal, Chennai and set aside the detention order and direct the respondents to produce him before this Court and set him at liberty.

For Petitioner : Mr.F.Wellington

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 20.09.2022 bearing reference 326/BCDFGISSSV/2022' [hereinafter 'impugned detention order' for the sake of convenience]. To be noted, the fifth 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.2328 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 is no adverse case. The ground case which is the sole substratum of the impugned detention order is Crime No.297 of 2022 on the file of K-8 Arumbakkam Police Station for alleged offences under Sections 342, 397 read with 120(B) 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.F.Wellington, learned counsel for petitioner and Mr.R.Muniyapparaj, learned Additional Public Prosecutor assisted by Mr.M.Sylvester John learned counsel for all respondents are before us.



H.C.P.No.2328 of 2022

WEB COPY 5. The contention of the petitioner is that the arrest of the detenu was not informed to the family members, though the sponsoring authority had projected as though the arrest had been informed to the detenu's wife through her mobile bearing No.9884486007 by way of SMS. He further submitted that a screen shot for the same is found in the booklet page No.549. From the screen shot it could be seen that the mobile Number of detenu's wife has been latter added, superimposed and a photostat copy has been taken. Further, there is no material to show that the mobile number belongs to the detenu's wife. Further he submitted that in the accused search register, the mobile number of detenu's wife has been recorded as 9884488007. In view of the same, the detenu has been denied of his valuable right of making effective representation which is a clear infraction of constitutional safeguard ingrained in Article 22(5) of Constitution of India.

6. Per contra, learned Additional Public Prosecutor submits that the detenu's wife was informed immediately after the arrest of the detenu as could be seen from page 549. Further submitted that in page 767, the detenu's wife Isakkiyammal in her statement confirmed that the arrest of her husband was informed to her through SMS in mobile No.9884486007. Her



H.C.P.No.2328 of 2022

statement is further clarified by the special report submitted by the sponsoring authority which is available in page 769.

7. Considering the submissions and on a perusal of materials it is seen that though learned Additional Public Prosecutor has heavily relied upon the screen shot which is at page 549, the Mobile No.9884486007 has been admittedly later added to the screen shot. Learned Additional Public Prosecutor fairly submitted that the screen shot is from the station writer of the sponsoring authority. In this case, no material had been produced to show that arrest intimation by way of SMS has emanated from the sponsoring authority.

8. 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.”

9. 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:

WEB COPY

“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.”

10. 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



H.C.P.No.2328 of 2022

preventive detention order deserves to be dislodged.

WEB COPY

11. Ergo, the sequitur is, captioned HCP is allowed and the detention order dated 20.09.2022 bearing reference 326/BCDFGISSSV/2022 made by the second respondent is set aside and the detenu Thiru.Srivatsan @ Srivarsan, aged 31 years, son of Thiru.Thiyagarajan 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
(5/5)

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.



WEB COPY



H.C.P.No.2328 of 2022

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

rsi

To

- 1.The Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George,
Chennai -600 009.
- 2.The Commissioner of Police,
Greater Chennai, Vepery,
Chennai – 600 007.
- 3.The Superintendent,
Central Prison, Puzhal,
Chennai – 600 066.
- 4.The Assistant Commissioner of Police,
Arumbakkam Range,
Chennai.
- 5.The Inspector of Police (Crime),
K-8, Arumbakkam Police Station,
Chennai.
- 6.The Public Prosecutor,
High Court of Madras, Chennai - 104.

H.C.P.No.2328 of 2022

**18.04.2023
(5/5)**