



HCP No.2443 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.04.2023

Coram

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

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

H.C.P. No.2443 of 2022

Ganesh Babu @ Babu @ Ganesh
S/o.Bala

.. Petitioner

Vs.

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

2.Commissioner of Police
Greater Chennai
Egmore, Chennai

3. The Superintendent of Prison
Central Prison – II, Chennai – 600 066

4. Inspector of Police
Team 31, Bank Fraud Investigation Wing
Central Crime Branch – 1
Egmore, Chennai

.. Respondents

Petition filed under Article 226 of the Constitution of India praying



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for issuance of a writ of habeas corpus to call for the entire records connected with the order of the 2nd respondent herein in 350/BCDFGISSSV/2022 dated 12.10.2022 against the petitioner, Ganesh Babu @ Babu @ Ganesh, son of Bala aged 45 years, confined at Central Prison II, Puzhal, Chennai – 66 and set aside the same and consequently direct the respondents herein to produce the body and person of the detenu before this Court and set him at liberty forthwith.

For Petitioner : Mr.V.M.Venkatramana
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 detenu assailing 'detention order dated 12.10.2022 bearing reference No.350/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.



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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 solitary case which is the sole substratum of the impugned detention order is Crime No.134 of 2022 on the file of Bank Fraud Investigation Wing, Central Crime Branch I, Greater Chennai Police, Vepery for alleged offences under Sections 120(B), 420, 465, 467, 468 and 471 of 'Indian Penal Code, 1860 (Act 45 of 1860)' ['IPC' for brevity] . 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.



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4.Mr.V.M.Venkatramana, learned counsel on record for petitioner and

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 intimated to the son of the detenu Saran by way of SMS but there is no signature of the detenu's son and further there is no material to show that mobile number found therein belongs to detenu's son, thereby hampered the right of the detenu to make an effective representation.

6.The learned Additional Public Prosecutor submitted that in the translated Tamil version, name of Hariharan, brother of the detenu has been shown as the person who received the arrest intimation.

7. In response, learned counsel for petitioner submitted that as per the English version of the Arrest Intimation Form, it has been served on the son of the detenu, but as per Tamil version it has been served on the brother



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of the detenu. In any event, there is no material to show that the mobile number belongs to detenu's brother or son. Hence, the above contention of the learned Prosecutor cannot be countenanced.

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



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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 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



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(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 12.10.2022 bearing reference No.350/BCDFGISSSV/2022 made by the second respondent is set aside and the detenu Thiru.Ganesh Babu @Babu @Ganesh aged 45 years, son of Thiru.Bala 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
gpa

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



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- To
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 - 5.The Public Prosecutor,
High Court of Madras, Chennai - 104.



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and
M.NIRMAL KUMAR, J.**

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