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HCP No.2446 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.04.2023

Coram

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

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

H.C.P. No.2446 of 2022

Manjulamani
W/o.Arun

.. Petitioner

Vs.

1.The State of Tamil Nadu
represented by its Secretary to Government
Prohibition and Excise Department
Fort St. George
Chennai – 600 009

2. The District Magistrate / District Collector
District Collectorate
Erode District
Erode

3. The Superintendent of Police
Erode

4. The Superintendent of Central Prison
Coimbatore

5. The Inspector of Police
Bargur Police Station
Erode District

.. Respondents



HCP No.2446 of 2022

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus directing the respondents to produce the body of the detenu namely Arun, aged 36 years, son of Selvakumar, now detained in Central Prison, Coimbatore before this Court and set him at liberty forthwith by calling for the records pertaining to the detention order dated 12.10.2022 om C.M.P.No.35/Drug Offender/2022-C1 passed by the 2nd respondent and quash the same.

For Petitioner : Mr.R.Marudhachalamurthy
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 wife of the detenu assailing 'detention order dated 12.10.2022 bearing reference Cr.M.P.No.35/Drug Offender/2022 C1' [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.



HCP No.2446 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 'Drug Offender' within the meaning of Section 2(e) of Act 14 of 1982.

3. There is one adverse case. The ground case which is the sole substratum of the impugned detention order is Crime No.43 of 2022 on the file of Bargur Police Station for alleged offences under Sections 273 and 328 of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] and Sections 7 and 24(1) of Cigarette and Other Tobacco Products Act, 2003. 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.



HCP No.2446 of 2022

4.Mr.R.Marudhachalamurthy, 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 informed to the wife of the detenu Manjulamani by way of SMS but no signature of the detenu's wife is found and further there is no material to show that mobile number found therein belongs to the detenu's wife, 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.2446 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.



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HCP No.2446 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 12.10.2022 bearing reference Cr.M.P.No.35/Drug



HCP No.2446 of 2022

Offender/2022 C1 made by the second respondent is set aside and the detenu Thiru.Arun, aged 36 years, son of Thiru.Selvakumar 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.)
17.04.2023

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, Coimbatore.



HCP No.2446 of 2022

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- To
1. The Principal Secretary
Home, Prohibition and Excise Department,
Secretariat
Chennai -600 009.
 2. The District Collector & District Magistrate
Cuddalore
Cuddalore District
 3. The Superintendent of Police
Cuddalore District
 4. The Superintendent of Prison
Center Prison Cuddalore
Cuddalore District
 5. Inspector of Police
Puduchatram Police Station
Cuddalore District
 6. The Public Prosecutor,
High Court of Madras, Chennai - 104.



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HCP No.2446 of 2022

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

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