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H.C.P.No.2436 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.04.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

and

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

H.C.P.No.2436 of 2022

R.Shanthi

Wife of Mr.Rosariokumar

.. Petitioner

Vs.

1. The Additional Chief Secretary to Government of Tamil Nadu
Home, Prohibition and Excise Department
Secretariat
Chennai-600 009.
2. The Commissioner of Police
Greater Chennai Police
Office of the Commissioner of Police
Vepery, Chennai-600 007.
3. The Superintendent
Central Prison
Puzhal, Chennai-600 066.
4. The Inspector of Police
R-8, Vadapalani Police Station
Vadapalani,
Chennai-26.

..Respondents

Page Nos.1/8



H.C.P.No.2436 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 entire records connected with the detention order passed by the second respondent in Memo No.364/BCDFGISSSV/2022 dated 14.10.2022 and quash the same as illegal and direct the respondents to produce the body or person of the petitioner's husband namely, Mr.Rosariokumar @ Chinna @ Chinrasu, Son of Mr.Simon aged about 25 years, now confined at Central Prison, Puzhal, Chennai-600 066 before this Court and set him at liberty forthwith.

For Petitioner : Mr.N.Kannan
For Respondents : Mr.E.Raj Thilak
Additional Public Prosecutor

ORDER

[Order of the Court was made by M.NIRMAL KUMAR, J.,]

Captioned 'Habeas Corpus Petition' ['HCP' for the sake of brevity] has been filed by wife of the detenu assailing a 'preventive detention order dated 14.10.2022 bearing reference BCDFGISSSV No.364/2022' [hereinafter 'impugned detention order' for the sake of convenience and brevity]. To be noted, fourth respondent is the sponsoring authority and second respondent is the detaining authority as the impugned detention order has been made by second respondent.



H.C.P.No.2436 of 2022

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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 are four adverse cases and one ground case. The ground case which is the sole substratum of the impugned detention order is Crime No.282 of 2022 on the file of R-8 Vadapalani Police Station for alleged offences under Sections 341, 294(b), 323, 392, 307 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.



H.C.P.No.2436 of 2022

4. Mr.N.Kannan, learned counsel on record for petitioner and Mr.E.Raj Thilak, learned State Additional Public Prosecutor for all respondents are before us.

5. Though several grounds raised in the petition, learned counsel attacked the impugned detention order primarily on the ground that it has been stated at Page No.5 of the impugned detention order that the arrest of the detenu was informed to his wife / the petitioner herein but in the grounds booklet no such arrest intimation under Section 50A of 'The Code of Criminal Procedure, 1973 (2 of 1974)' [hereinafter 'Cr.PC' for the sake of brevity and clarity] document available. He further submitted in page No.189, it is stated that arrest intimation was served. The petitioner gave no such statement. Further the statement is without any date. Thus, non-furnishing of arrest intimation denied the detenu from making an effective representation which is a Constitutional safeguard ingrained in Clause (5) of Article 22 of the Constitution of India.



H.C.P.No.2436 of 2022

6. The learned Additional Public Prosecutor submitted that from the Arrest / Court Surrender Form which is at Page No.133, it is seen that the arrest of the detenu was informed to the petitioner and the petitioner's name, address are recorded. The learned Prosecutor further submitted that the statement of the petitioner at Page No.189 confirms that the arrest of the detenu was informed to the petitioner. He further submitted that in Page No.190, a special report is available in which the arrest of the detenu informed to the petitioner is recorded which would show that the arrest of the detenu was informed to the petitioner.

7. As per Section 50A of Cr.PC the arrest of a person has to be informed, when there is obligation caused to the police officers to forthwith give the information regarding such arrest, place and details of the arrested person to any of his friends, relatives or such other persons nominated by the arrested person which is a fundamental right under Article 22 of the Constitution of India. In this case, from the grounds booklet, it is seen that there is no arrest intimation available. This would clearly impair the right of the detenu from making an effective representation. Therefore, the

Page Nos.5/8



H.C.P.No.2436 of 2022

impugned detention order is liable to be quashed.

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8. Before concluding, we also remind ourselves that preventive detention is not a punishment and HCP is a high prerogative writ.

9. Apropos, the sequitur is, captioned HCP is allowed. Impugned detention order dated 14.10.2022 bearing reference BCDFGISSSV No.364/2022 made by the second respondent is set aside and the detenu Thiru.Rosariokumar @ Chinna @ Chinrasu, aged 25 years, son of Thiru.Simon, is directed to be set at liberty forthwith, if not required in connection with any other case / cases. There shall be no order as to costs.

(M.S.,J.)

(M.N.K.,J.)

24.04.2023

Index : Yes / No

Speaking / Non-speaking

Neutral Citation : Yes / No

mk

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

Page Nos.6/8



H.C.P.No.2436 of 2022

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High Court, Madras.



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M.NIRMAL KUMAR, J.,

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