



H.C.P.No.2679 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.04.2023

CORAM

THE HONOURABLE MR.JUSTICE **M.SUNDAR**
and
THE HONOURABLE MR.JUSTICE **M.NIRMAL KUMAR**

H.C.P.No.2679 of 2022

Harini

.. Petitioner

Vs

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

2.The Commissioner of Police,
Avadi City,
Office of the Commissioner of Police,
(Goondas Section), Avadi, Chennai – 54.

3.The Superintendent of Police,
Central Prison, Puzhal.

4.The Inspector of Police,
E5 Sholavaram Police Station,
Chennai – 67.

.. Respondents

Petition filed under Article 226 of the Constitution of India
praying for issuance of a writ of habeas corpus to call for the records
relating to the detention order dated 30.11.2022 passed by the second
respondent in BCDFGISSSV No.167 of 2022 and quash the same and

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direct the respondents herein to produce the petitioner's husband Ezhilkumar @ Ezhil, S/o.Arul, aged 26 years, who is presently undergoing detention in the Central Prison, Puzhal, before this Court and set him at liberty forthwith.

For Petitioner : Mr.Gayathri
for Mr.P.Chandrasekar

For Respondents : Mr.R.Muniyapparaj
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] was listed before us on 25.04.2023. When this matter was taken up, we were informed that the co-accused who were clamped with similar preventive detention orders challenged the same in HCP Nos.2665 of 2022, 12, 14 and 21 of 2023 and they were allowed. But the matter was thereafter mentioned and we were informed that this is wrong and the four HCPs are pending and have not been allowed. Therefore, our order dated 25.04.2023 saying that the captioned HCP will also stand allowed on same terms is now recalled. We heard out the HCP on merits in the presence of Ms.Gayathri, learned counsel representing Mr.P.Chandrasekar, learned counsel on record for petitioner, who joined

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this Court on video conferencing platform (to be noted this is a hybrid hearing) and Mr.R.Muniyapparaj, learned State Additional Public prosecutor for all respondents and the following order is made:

1. Captioned HCP has been filed by wife of the detenu assailing a 'preventive detention order dated 30.11.2022 bearing reference No.167/BCDFGISSSV/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 impugned detention order has been made by second respondent.

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



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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 an adverse case. The ground case which is the sole substratum of the impugned detention order is Crime No.897 of 2022 on the file of E-5 Sholavaram Police Station for alleged offences under Sections 147, 148, 341, 294(b), 336, 427, 392, 397 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. The primary point raised by the learned counsel for the petitioner is that though it has been stated that the arrest of the detenu in connection with Crime Nos.896 and 897 of 2022 has been intimated to the wife of the detenu viz., the petitioner through SMS to the mobile number 9840041905, the same is not supported by any



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material. Referring to arrest intimation at Page Nos.215 and 216 of the grounds booklet, learned counsel for the petitioner submitted that there is no signature nor there is any supporting material to show that the arrest intimation is sent through SMS to the mobile number of the petitioner. Therefore, non-furnishing of the particulars hampered the right of the detenu to make an effective representation.

5. Learned Additional Public Prosecutor submits that the petitioner was informed about the arrest of the detenu based on the details provided by the detenu. He further submits that the petitioner had not made any representation in this regard and for the first time, such contention is putforth.

6. A perusal of the grounds booklet at Page Nos.215 and 216 would show that there is no signature and there is no material to show that the phone number to which the SMS was sent belongs to the petitioner.



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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



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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. (see Article 22(5) of the Constitution of India).*



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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.



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Impugned detention order dated 30.11.2022 bearing reference No.167/BCDFGISSSV/2022 made by the second respondent is set aside and the detenu Thiru.Ezhilkumar @ Ezhil, aged 26 years, S/o.Thiru.Arul, 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.)
28.04.2023

Index : Yes / No
Neutral Citation : Yes / No
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P.S: Registry to forthwith communicate this order to Jail authorities in Central Prison, Puzhal, Chennai.

To

- 1.The Secretary to Government,
Prohibition and Excise Department,
Fort St. George, Chennai – 600 009.
- 2.The Commissioner of Police,
Avadi City,
Office of the Commissioner of Police,
(Goondas Section), Avadi, Chennai – 54.
- 3.The Superintendent of Police,
Central Prison, Puzhal, Chennai.

**M.SUNDAR, J.,
and**

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4.The Inspector of Police,
E5 Sholavaram Police Station,
Chennai – 67.

5.The Public Prosecutor,
High Court, Madras.

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