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HCP No.40 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.04.2023

Coram

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

H.C.P. No.40 of 2023

K.Selvi
W/o.Kumar

... Petitioner / Detenu mother

Vs.

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

2.The Commissioner of Police
Greater Chennai
Office of the Commissioner of Police
Vepery, Chennai

3. The Superintendent of Police
Poonamallee Sub Jail, Chennai

4. The Inspector of Police
D-3, Ice House Police Station
Chennai

... Respondents

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 pertaining to the order of detention passed by the second respondent in his



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proceedings No.387/BCDFGISSSV/2022 dated 22.10.2022 and quash the same as illegal and produce the detenu, namely Ajay Rahul, son of Kumar, aged 23 years as Goonda, now he is detained in Sub-Jail, Poonamallee before this Court.

For Petitioner : Mr.S.Lokesh
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 mother of the detenu assailing 'detention order dated 22.10.2022 bearing reference BCDFGISSSV No.387/2022' [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.

2.Impugned detention order has been made under 'The Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Cyber law offenders,



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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 three adverse cases. The ground case which is the sole substratum of the impugned detention order is Crime No.385 of 2022 on the file of D-3 Ice House Station for alleged offences under Sections 147, 148, 341, 294(b), 323, 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.

4. Mr.S.Lokesh, 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.



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5.Learned counsel for petitioner assailed the impugned detention

order on three grounds, which are as follows:

a) Though Arrest Intimation is shown to be served on the sister-in-law, there is no signature of detenu's sister-in-law in Arrest Intimation and further there is no material to show that mobile number found therein belongs to the detenu's sister-in-law, thereby hampered the right of the detenu to make an effective representation;

b) The detenu has not filed any bail application but Sponsoring Authority wanted to project as if steps are being taken by the relatives of the detenu to file bail application by referring to statement purported to have been made by detenu's father which is annexed at page 437 of the grounds booklet but there is no such reference in the special report;

c) Confession statement recorded from the accused which is annexed at page Nos.233 and 235 of the booklet are illegible, which prevented the detenu from making an effective representation.



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6. The learned Additional Public Prosecutor refuted the allegations by stating that the petitioner had not denied that Manju is not the sister-in-law of the detenu and sister-in-law's particulars were recorded on serving of the arrest intimation. Further, the detenu's father clearly stated that steps have been taken for filing bail application. For the allegation of illegible copies of confession statement in the grounds booklet, learned Prosecutor submitted that it is readable one.

7. On a perusal of the booklet, it is seen that in the Arrest Intimation, which is at page 231 of the booklet, there is no signature or any other particulars provided to show that arrest intimation has been served on the detenu's relatives.

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:

“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.

11. As regards imminent possibility of detenu coming out on bail, from the special report it is seen that there is no mention about steps being taken to file bail application for the detenu. However, in the detention order, Detaining Authority arrived at the subjective satisfaction based on the recommendations of the Sponsoring Authority that relatives of detenu are taking steps to file a bail application and Detaining Authority inferred that there is a real possibility of detenu coming out on bail in the ground case.



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12. With regard to third point, we have perused page Nos.235 and 237 in the grounds booklet and we accept the submission of the learned counsel for petitioner that it is illegible which has hampered the detenu's right to make an effective representation.

13.The sequitur is, captioned HCP is allowed and the detention order dated 22.10.2022 bearing reference BCDFGISSSV No.387/2022 made by the second respondent is set aside and the detenu Thiru.Ajay Rahul, male,, aged 23 years, son of Thiru.Kumar 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.)
26.04.2023

Index : Yes / No
Speaking / Non-speaking
Neutral Citation : Yes / No
gpa

P.S: Registry to forthwith communicate this order to Jail authorities in Sub-Jail, Poonamallee, Chennai.



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Secretariat, Fort. St.George
Chennai -600 009.
- 2.The Commissioner of Police
Greater Chennai
Office of the Commissioner of Police
Vepery, Chennai
3. The Superintendent of Police
Poonamallee Sub Jail, Chennai
4. The Inspector of Police
D-3, Ice House Police Station
Chennai
- 5.The Public Prosecutor,
High Court of Madras, Chennai - 104.



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

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