



H.C.P.(MD)No.448 of 2025

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.09.2025

CORAM:

**THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN
and
THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR**

H.C.P.(MD)No.448 of 2025

Tamilselvam

... Petitioner

-VS-

1. The State of Tamilnadu, Rep By,
The Additional Chief Secretary to the Government,
Home, Prohibition and Excise Department,
Fort St.George,
Chennai - 9.
2. The District Collector and District Magistrate,
O/o.The District Collector and District Magistrate,
Madurai District.
3. The Superintendent of Prison,
Central Prison,
Madurai.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Habeas Corpus, calling for the entire records connected with the detention order of the respondent No.2 in B.C.D.F.G.I.S.S.V.No.10/2025, dated 27.02.2025 and quash the same



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and direct the respondents to produce the body or person of the petitioner's son namely Sivakumar @ Siva, S/o.Tamilselvam, aged about 21 years, now detained in Central Prison, Madurai before this Court and set him at liberty.

For Petitioner : Mr.S.Maya Perumal

For Respondents : Mr.A.Thiruvadikumar,
Addl. Public Prosecutor

ORDER

(Order of the Court was made by ***C.V.Karthikeyan, J.***)

The petitioner is the detenu namely Sivakumar @ Siva, S/o.Tamilselvam, aged about 21 years. The detenu had been detained by the second respondent by his order in B.C.D.F.G.I.S.S.S.V.No.10/2025, dated 27.02.2025, holding him to be a “Goonda” as contemplated under Section 2(f) of Tamil Nadu Act 14 of 1982. The said order is under challenge in this Habeas Corpus Petition.



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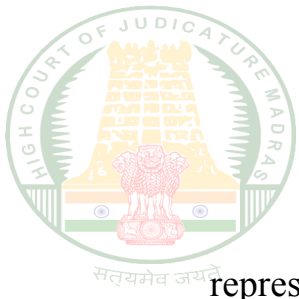
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2. We have heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the respondents. We have also perused the records produced by the Detaining Authority.

3. Though several points have been raised by the learned counsel for the petitioner, it is stated that the detaining authority in the impugned detention order did not inform about his right of making representation to the detaining authority within 12 days from the date of passing the detention order. Hence, it is submitted that the detenu was deprived of making representation to the detaining authority.

4. The learned Additional Public Prosecutor strongly opposed the Habeas Corpus Petition by filing his counter.

5. The question arises for consideration in this case is that whether the detention order is liable to be quashed on account of the failure of detaining authority to inform the right of detenu to make



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representation to the detaining authority within 12 days from the date of detaining in the detention order?

5.1. Article 22 (5) states that when any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order.

6. From the above constitutional provision, even though the constitution does not specify the authority to whom the detenu would make the representation, the Constitution Bench of the Hon'ble Supreme Court in *Kamleshkumar Ishwardas Patel Vs. Union of India and Others* reported in **1995 (4) SCC 51** has held as follows:-

“38.Having regard to the provisions of Article 22(5) of the Constitution and the provisions of the COFEPOSA Act and the PIT NDPS Act the question posed is thus answered : Where the detention order has been made under Section 3 of the COFEPOSA Act and the PIT NDPS Act by an officer



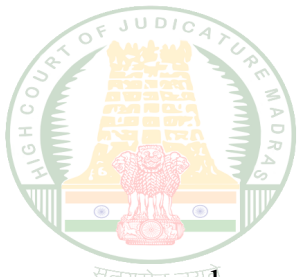
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especially empowered for that purpose either by the Central Government or the State Government the person detained has a right to make a representation to the said officer and the said officer is obliged to consider the said representation and the failure on his part to do so results in denial of the right conferred on the person detained to make a representation against the order of detention. This right of the detainee is in addition to his right to make the representation to the State Government and the Central Government where the detention order has been made by an officer specially authorised by a State Government and to the Central Government where the detention order has been made by an officer specially empowered by the Central Government, and to have the same duly considered. This right to make a representation necessarily implies that the person detained must be informed of his right to make a representation to the authority that has made the order of detention at the time when he is served with the grounds of detention so as to enable him to make such a representation and the failure to do so results in denial of the right of the person detained to make a representation.”

7. So, it is imperative on the part of the detaining authority to specify the authorities to whom the detenu would make the representation and the said requirement is applicable to the all detention



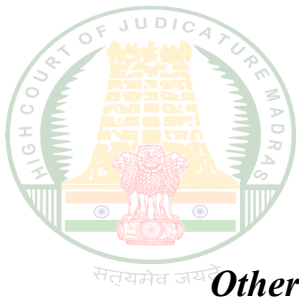
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laws and hence, the Hon'ble Supreme Court in State of **Maharashtra v. Santosh Shankar Acharya** reported in **(2000) 7 SCC 463 : 2000 SCC (Cri) 1400** has applied the above principle in the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug-Offenders and Dangerous Persons Act, 1981, and held as follows:-

“5.Non-communication of the fact to the detenu that he could make a representation to the detaining authority so long as the order of detention has not been approved by the State Government in a case where an order of detention is issued by an officer other than the State Government under sub-section (2) of Section 3 of the Maharashtra Act would constitute an infraction of a valuable right of the detenu under Article 22(5) of the Constitution and the ratio of the Constitution Bench decision of this Court in Kamleshkumar case [(1995) 4 SCC 51 : 1995 SCC (Cri) 643] would apply notwithstanding the fact that in Kamleshkumar case [(1995) 4 SCC 51 : 1995 SCC (Cri) 643] the Court was dealing with an order of detention issued under the provisions of the COFEPOSA Act.”

8. A said similar issue came up for hearing before the Coordinate Bench of this Court, in **S.Thai vs. State rep. by The Commissioner of Police, Tiruchirappalli City, Tiruchirappalli &**



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Others reported in **2000 (3) MWN(Cri.) 142**, where the said Bench held that the detenu must have informed his right of making representation to the detaining authority within 12 days. The said co-ordinate Bench considered the judgment reported in **2000 7 SCC 463** and held that the said requirement is form part of the detunu's right of making representation.

9. The said judement in ***S.Thai vs. State rep. by The Commissioner of Police, Tiruchirappalli City, Tiruchirappalli & Others*** reported in **2000 (3) MWN(Cri.) 142**, challenged by the State Government before the Hon'ble Supreme Court in CrI.A.No:728 of 2000. The Hon'ble Supreme Court re-affirmed the ratio State of ***Maharashtra v. Santosh Shankar Acharya*** reported in **(2000) 7 SCC 463** in the following terms;

“Mr.Altaf Ahmad, the learned Additional Solicitor General tried his level best to persuade us to take the view that the law laid down by this Court in the Constitution Bench judgment in Kamlesh Kumar's case (supra) was in relation to an order of detention under COFEPOSA and the



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law under COFEPOSA and NDPS Act provides different scheme than the scheme engrafted in the National Security Act or other Preventive Detention Laws including the Maharashtra Act as well as the Tamil Nadu Act. According to him, Article 22(5) of the Page 8 of 12 Constitution of India confers right of earliest representation, to a detenu but does not provide as to who is the authority to whom a representation could be made and, therefore, there is no bar for the Legislature to provide a specific authority to whom a representation could be made and in a case where the Legislature have provided such authority to whom a representation could be made, then it cannot be said that the detenu has still a right of making a representation to the detaining authority. Though this argument sounds. attractive but does not sustain on a larger constitutional perspective and on examining the rights of a detenu to make a representation to an authority which is the only right offered to a detenu. We are conscious of the fact that by interpreting the provisions as has been interpreted by us in CrI.A. No. 596/2000, several dangerous detenus may have to be released, but yet the consequences will not bind us ... interpreting a constitutional provision as well as different provisions of the Act in question and having examined and re-examined the different decisions relied upon by us in crl.. A. No. 596/2000, we are not persuaded to take a different view than what has been taken. Accordingly, the Special



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Leave Petitions and the Criminal Appeal stand dismissed.

The view taken by us in Crl. A. No.596/2000 is re-affirmed."

10. Similar question raised before the Hon'ble Bench of Five Judges of *Quwahati High Court* in 2006 (2) *Gau LR 452*. The Hon'ble Judges have held as follows ;-

"57.For all the aforesaid reasons, we hold:

(1) That a detenue has two rights under Article 22(5) of the Constitution:

(i) to be informed, as soon as may be, the grounds on which the order of detention is passed, i.e., the grounds which led to the subjective satisfaction of the detaining authority, and

(ii) to be afforded the earliest opportunity of making a representation against the order of detention. The twin rights are available to a detenu whether they are provided for or not in the preventive detention laws.

(2) The right to make representation to the detaining authority by a detenue in addition to his right to file representation to the Central Government or appropriate Government is also guaranteed under Article 22(5) of the Constitution which forms part of package of guaranteed fundamental right. No distinction as such could be made in



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this regard in respect of the detention orders made either under COFEPOSA, PIT NDPS or National Security Act, 1980, as the case may be.

(3) The detaining authority is under the constitutional obligation to inform the detainee of his right to make such a representation to the detaining authority.

(4) The failure to inform the detainee of such right to make representation to the detaining authority vitiates the detention order made even under the provisions of the National Security Act, 1980.”

11. Hence, in view of law laid down in ***State of Maharashtra v. Santosh Shankar Acharya*** reported in (2000) 7 SCC 463 was re-affirmed by the Hon'ble three Judges bench of the Supreme Court in CrI.A.No:728 of 2000, this court is inclined to accept the contention of the learned counsel for the detainee that the detaining authority in the impugned detention order has not informed the right of detainee to make a representation before the detaining authority within 12 days, which resulted in infraction of Article 22 of Constitution of India. so, the impugned detention order is liable to be quashed.



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12. In the result, the Habeas Corpus Petition is allowed and the order of detention in B.C.D.F.G.I.S.S.S.V.No.10/2025 dated 27.02.2025 passed by the second respondent is set aside. The detenu, viz., Sivakumar @ Siva, S/o.Tamilselvam, aged about 21 years is directed to be released forthwith unless his detention is required in connection with any other case.

13. We are deeply concerned with the detention order passed by the detaining authority overlooking an established point of law that the detenu should be informed about his right to make a representation to the detaining authority within a period of 12 days questioning the detention order. This right is independent of the right of the detenu to send representation to the Government and to the State Advisory Board expressing grievances about the detention order. The position of law has been in force from 2000 as laid down by the Hon'ble Supreme Court in *State of Maharashtra Vs. Santosh Shankar Acharya* reported in (2000) 7 SCC 463, which we had referred supra.



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14. We are of the considered view that explanation has to be called for from the then Collector, Madurai District, who had passed the detention order dated 27.02.2025, under what circumstances she had expressed subjective satisfaction and compliance of all constitutional procedure as required while passing the detention order, putting a citizen under preventive detention, particularly, taking into consideration the seriousness and gravity of offences and omitting to inform him about his right to make a representation. The first respondent viz., The Additional Chief Secretary to Government, Home, Prohibition and Excise Department, Chennai – 09, may obtain an explanation from the then District Collector/District Magistrate and forward the explanation given under covering affidavit to this Court.

15. Call the matter on **22.10.2025** for filing affidavit of the first respondent along with the explanation of the second respondent.

[C.V.K., J.]

[R.V., J.]

24.09.2025

vsm
NCC :Yes/No
Index: Yes/No



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Note: Registry is directed to mark a copy of this order to The Additional chief Secretary to Government, Home, Prohibition and Excise Department, Fort St. George, Chennai - 9.

To

1. The Additional chief Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George, Chennai - 9.
2. The District Collector and District Magistrate,
Office of the District Collector and District Magistrate,
Madurai District.
3. The Superintendent of Prison,
Madurai Central Prison,
Madurai District.
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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and
R.VIJAYAKUMAR, J.

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