

Malar Vs. Inspector of Police at D3 Ice House Police Station

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Court : Chennai

Decided On : Apr-29-2014

Judge : V.Dhanapalan

Appellant : Malar

Respondent : inspector of Police at D3 Ice House Police Station

Judgement :

In the High Court of Judicature at Madras Date:

29. 04.2014 Coram : The Hon'ble Mr. Justice V. Dhanapalan and The Hon'ble Mr. Justice G. Chockalingam H.C.P.No.2307 of 2013 Malar ... Petitioner -vs- 1. The Inspector of Police, D-3, Ice House Police Station, Chennai 600 005.

2. The Commissioner of Police, Egmore, Chennai 8.

3. The Secretary to Government, Home, Prohibition and Excise Department, Chennai 600 009. ... Respondents Prayer: Petition under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus directing the respondents to produce petitioner's son Janagaraj @ Jana,male aged about 23 years, son of Deivasigamani, detained under Act 14/82 vide order No.1110/2013 dated 24.09.2013 and now confined at Central Prison II, Puzhal, Chennai before the Court and set him at liberty forthwith by call for the records and setting aside the order of detention bearing No.1110/2013 dated 24.09.2013 on the file of the 2nd respondent. For Petitioner - Mr.S.Senthilvel For Respondents -

ORDER

(Judgment of the Court was delivered made by V. Dhanapalan, J.) Petitioner is the mother of the detenu and challenge is made to the order of detention dated 24.09.2013 made in No.1110/2013, passed by the 2nd respondent under which the detenu has been branded as a Goonda' and detained under The Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug- Offenders, Forest-offenders, Goondas, Immoral Traffic Offenders, Sand offenders, Slum-Grabbers and Video Pirates Act, 1982, hereinafter referred to as Tamil Nadu Act 14 of 1982.

2. As per the grounds of detention dated 24.09.2013, the detenu came to the adverse notice in the following case:- Sl. No.Police Station & Crime No.Section of Law 1 E-2, Royapettah Police Station Cr.No.721 of 2013 341, 294(b), 384 and 506(ii) IPC3 In para-3 of the grounds of detention, it is stated that among other things that the detenu is also involved in the commission of the offence, which took place on 11.09.2013 at 06.00 hours, which led to the registration of a case by Sub-Inspector of Police, Law and Order, D.3 Ice House Police Station, in Crime No.1069 of 2013 for 'Man Missing', subsequently altered into Sections 147, 148, 342, 364(A) and 506(ii) IPC and Section 3 r/w. 25(1)(1B) of Arms Act r/w. 34 IPC. It is further stated that the detenu was arrested on 13.09.2013 at 04.30 hours and produced before the learned 13th Metropolitan Magistrate, Egmore, Chennai, and remanded to judicial custody. The detaining authority, on being satisfied upon the materials placed before him that the activities of the detenu are prejudicial to the maintenance of public order, clamped the order of detention. Challenging the said order, petitioner is before this Court in this habeas corpus petition.

4. Amidst several grounds raised by the learned counsel for the petitioner to attack the impugned order of detention, he mainly focussed his argument that the detaining authority failed to ask clarification from the sponsoring authority about non serving of arrest memo in a proper manner to the family members, relatives or friends of the detenu and there was no proof to show that the intimation of arrest was given, as the arrest was communicated through cell phone to the brother of the detenu, which clearly shows non-application of mind on the part of detaining

authority.

5. Per contra, Mr.P.Govindarajan, learned Additional Public Prosecutor submits that acts committed by the detenu are prejudicial to the maintenance of public order and peace and the arrest was communicated by way of cell phone to the brother of the detenu, which is an effective and speedy way of communication available with the authorities and therefore, there is no illegality in making such intimation.

6. We have considered the rival submissions and perused the materials available on record.

7. A close reading of the arrest memo, which is annexed at page no.107 of the booklet shows that the arrest of detenu was intimated to the brother of detenu over phone No.9710458080. But at the same time, it is to be remembered that in order to meet fairness, justness and reasonableness, after a person is taken in custody in pursuance of an order of detention, the members of his household, preferably the parent, the child or the spouse, must be informed in writing of the passing of the order of detention and of the fact that the detenu has been taken in custody, by duly intimating as to the place of detention, including the place where the detenu is transferred from time to time, which would ensure the right of the person arrested under preventive detention. If such intimation of arrest has not been made effectively, then, it would confer a right upon the arrestee to impugn the arrest effected on him. In the case on hand, detaining authority has stated that the arrest of the detenu had been communicated through cell phone to the brother of the detenu, but, there is no proof to exhibit such intimation of arrest to the family members of the detenu. Thus, on the failure of the same, the detention order would be vitiated on the ground of deprivation of right guaranteed under Article 22(1) of the Constitution of India.

8. The Hon'ble Division Bench of this Court in the case of Shanmugam and another vs. State of Tamil Nadu and another, reported in (2013) 4 MLJ (Cri) 1, while issuing some suggestions and guidelines to the Government of Tamil Nadu in this regard, set aside the order of detention, by observing as under: ".19. Despite clear instructions given by the Government after touching upon the legal

position, the officer, who arrested the detenus informed the said arrest to the wife and friend of detenus over cellphone, by simply stating that the date of arrest being Sunday, no telegraphic service was available, which is a matter of ignorance on the part of arresting authorities, as in our country, telegraphic services are available even on Sundays. The mode of communication adopted by the authorities, which was not even looked into by the detaining authorities is not only unknown to the settled principles, but also is an attempt to cast aside the instructions given by the Government."

9. Accordingly, the impugned detention order passed by the 2nd respondent, detaining the detenu, namely Janaganraj @ Jana, made in No.1110/2013, dated 24.09.2013, is quashed and the habeas corpus petition is allowed. The above named detenu is ordered to be set at liberty forthwith, unless his custody is required in connection with any other case. [V.D.P.,J.]. [G.C.,J.]. 29.04.2014
Index : Yes/ Website : Yes/ rg To 1. The Inspector of Police, D-3, Ice House Police Station, Chennai 600 005.

2. The Commissioner of Police, Egmore, Chennai 8.

3. The Secretary to Government, Home, Prohibition and Excise Department, Chennai 600 009. V. Dhanapalan, J., and G. Chockalingam,J., 'rg H.C.P. No:

2307. of 2013 29.04.2014

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