IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.10.2022

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THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.11612 of 2011
and
M.P.No.1 of 2011 and 1 of 2013

A.Mohammed Firdaus ... Petitioner

Vs

1.The State of Tamil Nadu,
Rep by its Secretary,
Home Department, Fort St.George,
Chennai – 600 001.

2.The Commissioner of Police,
Chennai City, Chennai – 600 008.

3.The Inspector of Police,
C.C.B., Police Commissionerate,
Chennai – 600 008.

4.The State of Maharashtra,
Rep by its Secretary,
Home Department, Mantralaya,
Mumbai – 32.

5.The Commissioner of Police,
Greater Mumbai,
Crawford Market, Mumbai.

6.The Inspector of Police,
DCB CID Office II, Police Commissionerate,
Crawford Market, Mumbai.

7.The Commissioner of Customs,
Air Intelligence Unit, Avas Corporate Point,
Makwana Lane, Behind S.M.Centre,
Andheri Kurla Road,
Andheri East, Mumbai – 59. ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, forbearing the 2nd, 3rd, 4th, 5th and 6th respondents from executing the detention order dated 05.03.2008 passed by the 4th respondent in connection with F.No.SD/INT/AIU/06/2008 AP'D' on the file of 7th respondent for the purpose of arresting and detaining the petitioner at Chennai under COFEPOSA Act 1974.

For Petitioner : Mr.R.Sankarasubbu

For Respondents :Mrs.P.Rajarajeswari
Government Advocate
for R1 to R3

ORDER

This writ petition has been filed for a Mandamus to forbear the second, third, fourth, fifth and sixth respondents from executing the detention order dated 05.03.2008 passed by the fourth respondent in connection with F.No.SD/INT/AIU/06/2008 AP'D' on the file of seventh respondent for the purpose of arresting and detaining the petitioner at Chennai under COFEPOSA Act 1974.

2.The case of the petitioner is that the proposed detention for arresting in terms of the aforesaid order by the fourth respondent is in connection with the alleged auction proposed by the officers under Customs Act, seeking to impose penalty under Section 124 of the Customs Act, 1962.

3.The learned counsel for the petitioner has placed reliance on Section 135 (1)(i)(A) of the Customs Act, 1962. It is submitted that only for offences relating to any goods where the market price exceeds one crore of rupees proceeding under Section 135 of the Customs Act, 1962 can be initiated. The value of the mobile phone and the accessories were only Rs.26,49,050/-. Hence, the proposed detention/arresting of the petitioner was bad in law.

4.Today, the learned counsel for the petitioner has produced a copy of the decision of the Hon'ble Supreme Court in the case of **Sushanta Kumar Banik** Vs. **State of Tripura and others** CDJ 2022 SC 1064 vide its judgment dated 30.09.2022.

5.The law relating to detention and delay in execution of such order has been explained in para 12 to 21 by the Hon'ble Supreme Court. The Hon'ble

Supreme Court has examined several decisions rendered in the past ultimately summarized as follows:-

> “20.It is manifestly clear from a conspectus of the above decisions of this Court, that the underlying principle is that if there is unreasonable delay between the date of the order of detention & actual arrest of the detenu and in the same manner from the date of the proposal and passing of the order of detention, such delay unless satisfactorily explained throws a considerable doubt on the genuineness of the requisite subjective satisfaction of the detaining authority in passing the detention order and consequently render the detention order bad and invalid because the “live and proximate link” between the grounds of detention and the purpose of detention is snapped in arresting the detenu. A question whether the delay is unreasonable and stands unexplained depends on the facts and circumstances of each case.
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> 21.In the present case, the circumstances indicate that the detaining authority after the receipt of the proposal for the sponsoring authority was indifferent in passing the order of detention with greater promptitude. The “live and proximate link” between the grounds of detention and the purpose of detention stood snapped in arresting the detenu. More importantly the delay has not been explained in any manner & though this point of delay was specifically raised & argued before the High Court as evident from Para 14 of the impugned judgment yet the High Court has not recorded any finding on the same.”

6.There is merits in the submission made by the learned counsel for the petitioner.

7.Though the offence committed by the petitioner is for the alleged violation of the provisions of COFEPOSA Act 1974, which is different from the evasion of customs duty under the provision of the Customs Act, 1974. The amount may have been utilized by the petitioner for committing further offence under the Customs Act for evading payment of customs duty, yet there is no merits in detaining the petitioner now at this distant point of time after a lapse of 11 years. Therefore, the impugned detention order is quashed.

8.Accordingly, this writ petition stands allowed. No costs. Consequently, connected miscellaneous petitions are closed.

10.10.2022

Index: Yes/ No
Internet: Yes/No
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<u>C. SARAVANAN, J.</u>

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