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HCP No.186 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.06.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

H.C.P.No.186 of 2023

Selvaraj
S/o.Erusappan

.. Petitioner

Vs.

1. The State of Tamil Nadu
Rep. by its Additional Chief Secretary to Government
Home, Prohibition and Excise Department
Chennai-600 009.
2. The District Collector and District Magistrate
Villupuram District
Villupuram.
3. The Superintendent of Police
Villupuram District
Villupuram.
4. The Superintendent
Central Prison, Cuddalore
Cuddalore District.
5. The Inspector of Police
Vikravandi Police Station
Villupuram.

..Respondents



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Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus to call for the records in Rc.No.C2/40257/2022 dated 21.12.2022 on the file of the 2nd respondent and quash the same as illegal and consequently, direct the respondents to produce petitioner's son Raghavan, aged about 32 years, son of Selvaraj, who is now detained in Central Prison, Cuddalore before this Hon'ble Court and set him at liberty.

For Petitioner : Mr.M.Selvam
For Respondents : Mr.E.Raj Thilak
Additional Public Prosecutor

ORDER

[Order of the Court was made by M.SUNDAR, J.,]

When the captioned 'Habeas Corpus Petition' [hereinafter 'HCP' for the sake of convenience and clarity] was listed in the Admission Board on 09.02.2023, this Court made the following order:

'Captioned Habeas Corpus Petition has been filed in this Court on 31.01.2023 inter alia assailing a 'detention order dated 21.12.2022 bearing Rc.No.C2/40257/2022' (hereinafter 'impugned detention order' for the sake of brevity and clarity) made by 'second respondent' [hereinafter 'Detaining Authority' for the sake of convenience and clarity]. To be noted, fifth respondent is the Sponsoring Authority.

2. Father of the detenu is the petitioner.

3. Mr.M.Selvam, learned counsel on record for habeas corpus petitioner is before us. Learned counsel for petitioner submits that



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ground case qua the detenu is for alleged offences under Sections 147, 148, 120B, 341 and 302 IPC subsequently altered into Sections 147, 148, 120B, 341, 302 IPC r/w Sections 4(a) and 5 of Explosive Substances Act, 1908 in Crime No.554 of 2022 on the file of Vikravandi Police Station.

4. The aforementioned detention order has been made on the premise that the detenu is a 'Goonda' under Section 2(f) of '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 and clarity].

5. The impugned detention order has been assailed inter alia on the grounds that the arrest intimation was sent through SMS, some of the documents are not translated and several pages in the booklet furnished to the detenu are not legible.

6. Prima facie case made out for admission. Admit. Issue Rule nisi returnable by four weeks.

7. Mr.R.Muniyapparaj, learned Additional Public Prosecutor, State of Tamil Nadu accepts notice for all respondents. List the captioned Habeas Corpus Petition accordingly.'

2. The aforementioned order made in the 09.02.2023 Admission listing shall be read as an integral part and parcel of this order which means that the short forms, short references and abbreviations used in the order in the Admission listing shall be used in the instant order also.



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3. There is no adverse case. This solitary case which is the sole substratum of the impugned preventive detention order is Crime No.554 of 2022 on the file of Vikravandi Police Station for alleged offences under Sections 147, 148, 120B, 341 and 302 of IPC and subsequently altered into Sections 147, 148, 120B, 341, 302 IPC r/w Sections 4(a) and 5 of Explosive Substances Act, 1908. Owing to the nature of the challenge to the impugned preventive detention order, it is not necessary to delve into the factual matrix or be detained further by facts.

4. Mr.M.Selvam, learned counsel on record for petitioner and Mr.E.Raj Thilak, learned State Additional Public Prosecutor for all respondents are before us.

5. Though several grounds have been urged in the support affidavit, learned counsel for petitioner at the hearing exhorted one point in his campaign against the impugned detention order and that one point turns on delay in considering a representation sent qua impugned detention order.



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6. Responding to the aforementioned submission, learned State Additional Public Prosecutor submitted to the contrary and placed before us a list of dates and the details of the same are as follows:

5.	Representation dated	---	30.12.2022
6.	Representation received dated	---	05.01.2023
7.	File submitted on dated	---	11.01.2023
8.	Under Secretary dealt with on	---	11.01.2023
9.	Deputy secretary dealt with on	---	11.01.2023
10.	Minister dealt with and file received on	---	19.01.2023
11.	Rejected letter prepared on	---	19.01.2023
12.	Rejection letter sent to the delenu on	---	20.01.2023

Govt Holidays falls on: 07.01.2023, 08.01.2023, 14.01.2023, 15.01.2023, 16.01.2023, 17.01.2023

S.No	Representation	Column 6 to 7	Column 9 to 10
1.	No of days	5	7
2.	No of holidays	2	4
	Total delay days	3	3
		Total	6 days delay

7. We find that even if the intervening 6 public/Government holidays 07.01.2023, 08.01.2023, 14.01.2023, 15.01.2023, 16.01.2023 and 17.01.2023 are excluded, there is a delay of 6 days in considering the representation. We make it clear that the delay in considering the representation point in challenges to preventive detention orders cannot be decided quantitatively. It has to be decided qualitatively based on the facts, circumstances and the trajectory the representation has taken, in other words, it has to be decided on



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case to case basis. In the case on hand, we adopt such an approach and we find that 6 days delay vitiates the impugned detention order. We also hasten to make it clear that there can be no straight jacket formula in terms of number of days as regards this point is concerned and therefore, this order will not serve as precedent in all and every case.

9. Before concluding, we also remind ourselves that preventive detention is not a punishment and HCP is a high prerogative writ.

10. Apropos, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 21.12.2022 bearing reference Rc.No.C2/40257/2022 made by the second respondent is set aside and the detenu Thiru.Raghavan, male, aged 32 years, son of Thiru.Selvaraj, 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.) (R.S.V.,J.)
30.06.2023

Index : Yes

Speaking

Neutral Citation : Yes

mk

P.S: Registry to forthwith communicate this order to Jail authorities in Central Prison, Cuddalore.



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To
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6. The Public Prosecutor
High Court, Madras.



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M.SUNDAR, J.,
and
R.SAKTHIVEL, J.,

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