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H.C.P.No.640 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.08.2023

CORAM

THE HONOURABLE MR.JUSTICE **M.SUNDAR**
and
THE HONOURABLE MR.JUSTICE **R.SAKTHIVEL**

H.C.P.No.640 of 2023

Jagathammal

.. Petitioner

Vs

1. The State of Tamil Nadu rep. By its
Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Fort St. George, Chennai -9.
2. The Commissioner of Police,
Avadi City Police,
Commissioner Office, Avadi, Chennai – 54.
- 3.The Inspector of Police,
T-5 Thiruverkadu Police Station,
Chennai.
- 4.The Superintendent of Prison,
Central Prison II, Puzhal, 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 records in No.82/BCDFGISSSV/2023 dated 30.03.2023 on the file of second respondent herein and set aside the same as illegal and produce the detenu Rajesh @ Sangili Rajesh, son of Munusamy, aged 30 years,



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now confined at Central Prison, Puzhal, Chennai, before this Court and set him at liberty.

For Petitioner : Mr.S.Senthilvel
for Mr.Ilayaraja Kandasamy

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 20.04.2023, the following order was made:

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

(Order of the Court was made by M.SUNDAR, J.,)

Captioned Habeas Corpus Petition has been filed in this Court on 13.04.2023 inter alia assailing a detention order dated 30.03.2023 bearing reference No.82/BCDFGISSSV/2023 made by 'second respondent' [hereinafter 'Detaining Authority' for the sake of convenience and clarity]. To be noted, third respondent is the Sponsoring Authority.

2. Wife of detenu is the petitioner.

3. Learned counsel for petitioner submits that ground case qua the detenu is for alleged offences under Sections 341, 294(b), 427, 336, 397 and 506(ii) of 'The Indian Penal Code (45



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of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] in Crime No.119 of 2023 on the file of T-5 Thiruverkadu 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 detention order has been assailed inter alia on the ground that Tamil translation of several documents were not furnished to the detenu which prevented the detenu from making an effective representation.

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 Admission Board captures all essentials

that are imperative for appreciating this order and therefore, we are not setting out the same again. However, short forms, short references and abbreviations used in the Admission Board order will continue to be used in the instant order also for the sake of brevity, convenience and clarity.

3. Mr.S.Senthilvel, learned counsel representing the counsel on



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record for petitioner and Mr.E.Raj Thilak, learned Additional Public Prosecutor for all the respondents are before us.

4. To be noted, 'order dated 30.03.2023 bearing reference No.82/BCDFGISSSV/2023' made by second respondent / Detaining Authority shall in this order be referred to as 'impugned preventive detention order' for the sake of convenience and clarity.

5. As would be evident from paragraph 5 of the Admission Board order, at the time of admission, learned counsel for petitioner predicated his challenge to the impugned preventive detention order on the point that Tamil translation of several documents were not furnished to the detenu which prevented the detenu from making an effective representation, however in the final hearing today, learned counsel for petitioner exhorted one point in his campaign against the impugned preventive detention order and that one point turns on delay in considering a representation sent qua impugned preventive detention order.

6. Responding to the submission, learned State Additional Public



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Prosecutor submitted to the contrary and placed before us the list of dates and the details are as follows:

<i>'Representation dated</i>	<i>..</i>	<i>Nil</i>
<i>Representation received on</i>	<i>..</i>	<i>20.07.2023</i>
<i>File submitted on</i>	<i>..</i>	<i>24.07.2023</i>
<i>Under Secretary dealt with on</i>	<i>..</i>	<i>---</i>
<i>Deputy Secretary dealt with on</i>	<i>..</i>	<i>24.07.2023</i>
<i>Minister dealt with and</i>	<i>..</i>	<i>31.07.2023</i>
<i>Rejection letter prepared on</i>	<i>..</i>	<i>31.07.2023</i>
<i>Rejection letter sent to the detenu on</i>	<i>..</i>	<i>31.07.2023</i>

Govt. Holidays:

22.07.2023. 23.07.2023. 29.07.2023 and 30.07.2023'

7. We find that even if the intervening four public/Government holidays 22.07.2023, 23.07.2023, 29.07.2023 and 30.07.2023 are excluded there is not less than five days delay 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 case



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

8. Ergo, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 30.03.2023 bearing reference No.82/BCDFGISSSV/2023 made by the second respondent is set aside and the detenu Thiru.Rajesh @ Sangili Rajesh, aged 30 years, Son of Thiru.Munusamy, 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.)
16.08.2023

Index : Yes/No
Neutral Citation : Yes/No
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P.S: Registry to forthwith communicate this order to Jail authorities in Central Prison, Puzhal, Chennai.

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