



WEB COPY



HCP.No.772/2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 03.10.2023

CORAM

THE HONOURABLE MR . JUSTICE S.S.SUNDAR

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

H.C.P.No.772/2023

Mr.J.Kumar

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Petitioner

Versus

1.The State of Tamil Nadu
rep.by the Secretary
Home, Prohibition & Excise Department
Fort St George, Chennai 600 009.

2.The Commissioner of Police,
Salem City,
Office of the Commissioner of Police,
Linemedu, Salem - 636 006.

3.The Superintendent of Prison,
Central Prison, Salem.

4.The Inspector of Police,
Annadanapatty Police Station,
Salem City.

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Respondents



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Prayer:- Habeas Corpus Petition filed under Article 226 of the Constitution of India praying for a Writ of Habeas Corpus calling for the records relating to the detention order in C.M.P.No.10/Goonda/Salem City/2023, dated 09.03.2023 passed by the second respondent under the Tamil Nadu Act 14 of 1982 and set aside the same and direct the Respondents to produce the Petitioner's son Nirmaldass @ Dass S/o.Kumar aged about 22 years the detenu, now confined in Central Prison, Salem before this Court and set the Petitioner's son Nirmaldass @ Dass S/o.Kumar aged about 22 years the detenu herein at liberty.

For Petitioner : Mr.Mahasree Thangaraj
For Respondents : Mr.E.Raj Thilak
Additional Public Prosecutor

ORDER

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

(1)The petitioner, father of the detenu Nirmaldass @ Dass, has come forward with this petition challenging the detention order passed by the 2nd respondent dated 09.03.2023 slapped on his son, branding him as "Goonda" 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 [Tamil Nadu Act 14 of 1982].

(2)Heard the learned counsel for the petitioner and the learned Additional Public Prosecutor appearing for the respondents.



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(3) Though several grounds are raised in the petition, the learned counsel for the petitioner submitted that there is a delay in passing the order of detention. In the present case, though the detenu was arrested on 02.02.2023, the Detention Order was passed only on 09.03.2023.

(4) The Hon'ble Supreme Court in the case of ***Sushantha Kumar Banik Vs. State of Tripura and Others*** reported in ***AIR 2022 SC 4715***, has dealt with similar situation and has held in paragraph No.14 as follows:-

"In view of the above subject of the preventive detention, it becomes very imperative on the part of the detaining authority as well as the executing authorities to remain vigilant and keep their eyes skinned but to turn a blind eye in passing the detention order at the earliest from the date of the proposal and executing the detention order because any indifferent attitude on the part of the detaining authority or executing authority would defeat the very purpose of the preventive action and turn the detention order as a dead letter and frustrate the entire proceedings."

(5) The Hon'ble Supreme Court was persuaded to allow the Appeal filed before it mainly on the ground that delay in passing the Order of



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Detention from the date of the proposal would snap the "live and proximate link" between prejudicial activities and the purpose of detention. Therefore, failure on the part of the Detaining Authority in explaining such delay as in the present case also is a valid ground for quashing the Detention Order.

(6) In view of the aforesaid reason, the detention order passed by the 2nd respondent dated 09.03.2023 in C.M.P.No.10/Goonda/Salem City/2023, is hereby set aside and the Habeas Corpus Petition is allowed. The detenu viz., Nirmaldass @ Dass S/o.Kumar aged about 22 years, is directed to be set at liberty forthwith unless he is required in connection with any other case.

[S.S.S.R., J.] [S.M, J.]
03.10.2023

AP



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To

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S.S.SUNDAR, J.,
AND
SUNDER MOHAN, J.,

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