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HCP.No.906/2023

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.906/2023

Anitha

..

Petitioner

Versus

1.Government of Tamil Nadu,
rep. by its Secretary,
Home, Prohibition and Excise Department,
Secretariat, Chennai – 600 009.

2.The Commissioner of Police,
Commissioner Office,
Vepery, Chennai.

3.The Superintendent,
Central Prison,
Puzhal, Chennai.

4.The State rep. By
The Inspector of Police,
H-5, New Washermenpet Police Station,
Chennai.

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Respondents



HCP.No.906/2023

Prayer:- Habeas Corpus Petition filed under Article 226 of the Constitution of India praying for a Writ of Habeas Corpus calling for the records in Detention Order passed in Memo No.94, BCDFGISSSV/2023 dated 10.04.2023 on the file of the second respondent herein and quash the same and direct the respondents herein to produce the body of my husband, Thiru.Nagaraj @ Vellai Nagaraj M/A 29 years now confined in Central Prison, Puzhal, Chennai before this Hon'ble Court and set him at liberty.

For Petitioner : Mr.D.Padmanabhan
For Respondents : Mr.E.Raj Thilak
Additional Public Prosecutor

ORDER

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

(1)The petitioner, who is the wife of the detenu, has come forward with this petition challenging the detention order passed by the 2nd respondent dated 10.04.2023 slapped on her husband, 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].



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

(3) The Detention Order is liable to be interfered with by this Court on two grounds. Firstly, on the ground of delay in passing the Detention Order and secondly, on the ground of non-application of mind.

(4) This Court finds delay in passing of the Detention Order as the accused was arrested in the Ground Case on 16.03.2023 whereas the Detention Order was passed only on 10.04.2023.

(5) 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



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and turn the detention order as a dead letter and frustrate the entire proceedings.”

(6)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 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.

(7)On a perusal of the Grounds of Detention, this Court finds that the subjective satisfaction is absent in this case. It is seen that in the Detention Order, the Detaining Authority has stated that the detenu is likely to come out on bail by referring to a similar case in Crime No.61/2023, wherein, the accused therein was granted bail by the learned Principal Sessions Judge, Chennai in CrI.MP.No.7525/2023, which bail order is found place in page No.158 of the Booklet furnished to the detenu.



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(8)However, a perusal of the said bail order reveals that the accused therein was granted bail after recording no objection from the side of the Public Prosecutor and that no adverse case was also found against him. However, in the present case, there are three adverse cases against the detenu herein and it is not likely that the learned Additional Public Prosecutor would report no objection for the detenu herein. Hence, the Detention order is vitiated as there is non-application of mind on the part of the Detaining Authority.

(9)In view of the aforesaid reasons, the detention order passed by the first respondent dated 10.04.2023 in BCDFGISSSV No.94/2023 is hereby set aside and the Habeas Corpus Petition is allowed. The detenu viz., Nagaraj @ Vellai Nagaraj, S/o.Nithyanandam, aged 29 years, is directed to be set at liberty forthwith unless he is required in connection with any other case.

[SSSRJ] [SMJ]
03.10.2023

AP



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To

- 1.The Secretary,
Government of Tamil Nadu,
Home, Prohibition and Excise Department,
Secretariat, Chennai – 600 009.
- 2.The Commissioner of Police,
Commissioner Office,
Vepery, Chennai.
- 3.The Superintendent,
Central Prison,
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- 4.The Inspector of Police,
H-5, New Washermenpet Police Station,
Chennai.
- 5.The Public Prosecutor
High Court, Madras.



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S.S.SUNDAR, J.,

AND

SUNDER MOHAN, J.,

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