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HCP.No.1171/2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 11.10.2023

CORAM

THE HONOURABLE MR . JUSTICE S.S.SUNDAR

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

H.C.P.No.1171/2023

Annalakshmi

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Petitioner

Versus

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

2.The Commissioner of Police/Detaining Authority
City Police Office, Huzur Road, Coimbatore City
Coimbatore-18.

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

4.The Inspector of Police
All Women Police Station [West]
Coimbatore City.

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Respondents

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



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to the detention order vide Memo.C.No.16/G/IS/2023 dated 25.02.2023, passed by the 2nd respondent and quash the same and direct the respondents herein to produce the petitioner's son namely G.Athistaraj @ Raja, S/o.late Gnanaraj, aged 25 years, [who is presently undergoing detention in the Central Prison, Coimbatore], before this Court and set him at liberty.

For Petitioner : Mr.A.Sathishkumar
For Respondents : Mr.E.Raj Thilak
Additional Public Prosecutor

ORDER

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

- (1)The petitioner, brother of the detenu Selvam, has come forward with this petition challenging the detention order passed by the 2nd respondent dated 08.05.2023 slapped on her brother, branding him as "Drug Offender" 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 24.01.2023, the Detention Order was passed only on 25.02.2023. Learned counsel also submitted that the detention order of the co-accused was set aside by this Court in HCP.No.1400/2023 on 27.09.2023.

(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.21 as follows:-

"In the present case, the circumstances indicate that the detaining authority after the receipt of the proposal from 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."

(5) The Hon'ble Supreme Court was persuaded to allow the Appeal filed



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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. Further, the Detention Order of the co-accused has been quashed by this Court on 27.09.2023 in HCP.No.1499/2023 on the same ground that there is an unexplained and inordinate delay in passing the Detention Order.

(6) In view of the aforesaid reason, the detention order passed by the 2nd respondent dated 25.02.2023 in C.No.16/G/IS/2023 is hereby set aside and the Habeas Corpus Petition is allowed. The detenu viz., G.Athistaraj @ Raja, S/o.Gnanaraj, aged about 25 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.]
11.10.2023

AP



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To
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- 1.The Secretary to Government
State of Tamil Nadu
Home, Prohibition & Excise Department
Fort St George, Chennai 600 009.
- 2.The Commissioner of Police/Detaining Authority
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- 5.The Public Prosecutor
High Court, Madras.

S.S.SUNDAR, J.,



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SUNDER MOHAN, J.,

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