



WEB COPY



HCP.No.1224 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.10.2023

CORAM

THE HONOURABLE MR . JUSTICE **S.S.SUNDAR**
AND
THE HONOURABLE MR. JUSTICE **SUNDER MOHAN**

H.C.P.No.1224 of 2023

Kalaiyarasi

.. Petitioner

Vs.

- 1.The Secretary to the Government,
Home, Prohibition and Excise (XVI) Department,
Secretariat, Chennai - 9.
- 2.The District Collector and District Magistrate
of Cuddalore at Cuddalore District,
O/o.District Collector, Cuddalore District.
- 3.The Superintendent of Police,
O/o.Superintendent of Police,
Cuddalore District.
- 4.The Superintendent of Prison,
Central Prison, Cuddalore,
Cuddalore District.
- 5.The Inspector of Police,
Neyveli Thermal Police Station,
Cuddalore District.

.. Respondents

Petition filed under Article 226 of The Constitution of India
praying for a Writ of Habeas Corpus to call for the entire records



HCP.No.1224 of 2023

connected with the detention No.C3/D.O/01/2023 dated 25.02.2023 on the file of the second respondent and quash the same and direct the respondents to produce the body and person of petitioner's son one named Mr.Mahesh @ Maheshkumar, S/o.Kamaraj, aged about 25 years, now confined at Central Prison, Cuddalore, before this Court and set him at liberty forthwith.

For Petitioner : Mr.P.Muthamizh Selvakumar

For Respondents : Mr.E.Raj Thilak
Additional Public Prosecutor

ORDER

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

The petitioner, mother of the detenu Maheshkumar @ Mahesh, has come forward with this petition challenging the detention order passed by the second respondent dated 25.02.2023 slapped on her son, branding him as "Goonda" under 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 14 of 1982].



HCP.No.1224 of 2023

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

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 13.01.2023, the Detention Order was passed only on 25.02.2023.

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:-

"21. 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



HCP.No.1224 of 2023

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 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.

6. Learned counsel for the petitioner also pointed out that the detaining authority relied upon the order passed in a similar case viz., CrI.M.P.No.1324 of 2020 dated 04.03.2020. The detaining authority opined that the detenu is also likely to be released on bail on the basis of the order in CrI.M.P.No.1324 of 2020. However, a reading of the said order would show that the Public Prosecutor has expressed no serious objection before the Court for granting bail to the accused in the said case. Therefore, the detaining authority while considering the similar case in CrI.M.P.No.1324 of 2020 has not applied his mind and it



HCP.No.1224 of 2023

cannot be inferred that the detenu is also likely to be released on bail on the basis of an order that was passed by recording the no objection of the Prosecutor. Therefore, the Detention Order is vitiated on the ground of non-application of mind also.

7. In view of the aforesaid reasons, the Detention Order passed by the second respondent dated 25.02.2023 in C3/D.O./01/2023, is hereby set aside and the Habeas Corpus Petition is allowed. The detenu viz., Maheshkumar @ Mahesh, S/o.Kamaraj, 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.]
12.10.2023

Index:Yes/No
Neutral Citation:Yes/No
mmi

To

- 1.The Secretary to the Government,
Home, Prohibition and Excise (XVI) Department,
Secretariat, Chennai - 9.
- 2.The District Collector and District Magistrate
of Cuddalore at Cuddalore District,
O/o.District Collector, Cuddalore District.

Page 5 of 7



HCP.No.1224 of 2023

WEB COPY

- 3.The Superintendent of Police,
O/o.Superintendent of Police,
Cuddalore District.
- 4.The Superintendent of Prison,
Central Prison, Cuddalore,
Cuddalore District.
- 5.The Inspector of Police,
Neyveli Thermal Police Station,
Cuddalore District.
- 6.The Public Prosecutor
High Court, Madras.



WEB COPY



HCP.No.1224 of 2023

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

mmi

H.C.P.No.1224 of 2023

12.10.2023