



H.C.P.No.1189 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.10.2023

CORAM :

THE HONOURABLE MR. JUSTICE S.S. SUNDAR

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

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Devi

... Petitioner

Vs.

- 1.State of Tamil Nadu,
Represented by the Secretary,
Home, Prohibition and Excise Department,
Fort St. George,
Chennai – 600 009.
- 2.The Commissioner of Police,
Greater Chennai,
Office of the Commissionerate of Police (Goondas Section)
Vepery,
Chennai – 600 077.
- 3.The Superintendent of Police,
Central Prison,
Puzhal,
Chennai District.



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4.The Inspector of Police,
S-7, Madipakkam Police Station,
Chennai District.

... Respondents

Prayer : Habeas Corpus Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Habeas Corpus to call for the records relating to the detention order vide Memo BCDFGISSSV.No.162/2023 dated 15.05.2023 passed by the second respondent and quash the same and direct the respondents herein to produce the petitioner's son namely Siva @ Sivaprakash, S/o. Paramasivam, aged about 24 years, (who is presently undergoing detention in the Central Prison, Puzhal, Chennai, before this Honble Court, and set him at liberty.

For Petitioner	:	Mr.S.N.Arun Kumar
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 Siva @ Sivaprakash, S/o. Paramasivam, aged about 24 years, has come forward with this petition challenging the detention order passed by the 2nd respondent dated 15.05.2023 slapped on her son, branding him as "Goonda" under the Tamil



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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.

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 10.04.2023, the Detention Order was passed only on 15.05.2023.

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 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.In view of the aforesaid reason, the detention order passed by the 2nd respondent in BCDFGISSSV.No.162/2023 dated 15.05.2023, is hereby set aside and the Habeas Corpus Petition is allowed. The detenu viz., Siva @ Sivaprakash, S/o. Paramasivam, aged about 24 years, is directed to be set at



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liberty forthwith unless he is required in connection with any other case.

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(S.S.S.R., J.) (S.M., J.)
10.10.2023

mkn

Internet : Yes

Index : Yes / No

Neutral Citation : Yes / No

To

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S.S. SUNDAR, J.
and



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5.The Public Prosecutor,
High Court, Madras.

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