



WEB COPY



HCP.No.1218 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.10.2023

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

H.C.P.No.1218 of 2023

Alamelu .. Petitioner

Vs.

1.State of Tamil Nadu rep. by
The Secretary to Government,
Department of Home, Prohibition and Excise,
Secretariat, Fort St George, Chennai.

2.The Commissioner of Police,
Avadi City, Avadi.

3.Superintendent of Police,
Central Prison, Puzhal II, Chennai.

4.Inspector of Police,
PEW Red Hills Police Station,
Chennai.

.. Respondents

Petition filed under Article 226 of The Constitution of India praying for a Writ of Habeas Corpus to call for the records in Memo No.128/BCDFGISSSV/2023 passed by the second respondent on 12.05.2023 and quash the same as illegal and consequently direct the respondents to produce the petitioner's brother Srinivasan, son of Sampath, aged about 43 years, before this Court, who is now detained in Central Prison, Puzhal II, Chennai and set him at liberty.



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For Petitioner : Mr.A.Elumalai

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

ORDER

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

The petitioner, sister of the detenu Srinivasan, has come forward with this petition challenging the detention order passed by the second respondent dated 12.05.2023 slapped on her brother, branding him as "Drug Offender" 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].

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 19.03.2023, the Detention Order was passed only on 12.05.2023.



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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 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



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"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. The second ground urged by the learned counsel for the petitioner is that the detaining authority relied upon the order in similar case viz., Crl.M.P.No.1842 of 2020 dated 15.12.2020. Based on the said order, the detaining authority concluded that the detenu is also likely to be released on bail. However, the fact remains that the similar case bail order viz., Crl.M.P.No.1842 of 2020 says that the accused therein was not in possession of commercial quantity and therefore Section 37 of NDPS Act would not come into play. But in the instant case, the detenu was found in possession of commercial quantity in the grounds case and therefore the same reasoning on which bail was granted in similar case cannot be applied to the present case. Therefore, we find that there is non-application of mind on the part of the detaining authority in relying on the similar case, which is not similar and the detention order is liable to be quashed on this ground also.



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7. In view of the aforesaid reason, the detention order passed by the second respondent dated 12.05.2023 in No.128/BCDFGISSSV/2023, is hereby set aside and the Habeas Corpus Petition is allowed. The detenu viz., Srinivasan, S/o.Sampath, aged about 43 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
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To

- 1.The Secretary to Government,
Department of Home, Prohibition and Excise,
Secretariat, Fort St George, Chennai.
- 2.The Commissioner of Police,
Avadi City, Avadi.
- 3.The Superintendent of Police,
Central Prison, Puzhal II, Chennai.
- 4.The Inspector of Police,
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- 5.The Public Prosecutor
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AND
SUNDER MOHAN, J.,**

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