



WEB COPY



H.C.P.No.1646 of 2022

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.03.2023

CORAM

THE HONOURABLE MR.JUSTICE **M.SUNDAR**
and
THE HONOURABLE MR.JUSTICE **M.NIRMAL KUMAR**

H.C.P.No.1646 of 2022

Udhayakumar

.. Petitioner

Vs

- 1.State Rep. by
The Secretary to Government, Home,
Prohibition and Excise Department,
Secretariat, Chennai – 600 009.
- 2.The District Collector and District Magistrate,
Chengelpet District,
Chengelpet.
- 3.The Superintendent of Police,
Chengelpet District.
- 4.The Superintendent,
Special Prison for Women,
Puzhal, Chennai.
- 5.The Inspector of Police,
PEW Police Station,
Chengelpet.

.. Respondents



H.C.P.No.1646 of 2022

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus calling for the records in CPT No.43/2022 passed by the second respondent dated 12.08.2022 and set aside the same and directing the respondents to produce the detenue viz., Indira W/o.Ranganathan aged about 62 years who is now detained in Women Special Prison, Puzhal, Chennai before this Court and set the detenu at liberty forthwith.

For Petitioner : Mr.R.Ganesh

For Respondents : Mr.R.Muniyapparaj
Additional Public Prosecutor
Assisted by Mr.M.Sylvester John

ORDER

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

Captioned 'Habeas Corpus Petition' ['HCP' for the sake of brevity] has been filed by the son of detenu assailing a 'preventive detention order dated 12.08.2022 bearing reference CPT.No.43/2022' [hereinafter 'impugned detention order' for the sake of convenience and brevity]. To be noted, fifth respondent is the sponsoring authority and second respondent is the detaining authority as impugned detention order has been made by second respondent.



H.C.P.No.1646 of 2022

WEB COPY

2. Impugned detention order has been made 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 No.14 of 1982)' [hereinafter 'Act 14 of 1982' for the sake of convenience and clarity] on the premise that the detenu is a 'Bootlegger' within the meaning of Section 2(b) of Act 14 of 1982.

3. There are two adverse cases. The ground case which is the sole substratum of the impugned detention order is Crime No.304 of 2022 on the file of Chengalpattu Prohibition Enforcement Wing for alleged offences under Sections 4(1)(aaa) 4(1-A) of Tamil Nadu Prohibition Act 1937 read with Sections 6 and 11 of Tamil Nadu Rectified Spirit Rules, 2000. Owing to the nature of the challenge to the impugned detention order, it is not necessary to delve into the factual matrix or be detained further by facts.

4. Mr.R.Ganesh, learned counsel representing counsel on record for



H.C.P.No.1646 of 2022

petitioner and Mr.R.Muniyapparaj, learned State Additional Public Prosecutor assisted by Mr.M.Sylvester John, learned counsel for all respondents are before us.

5.Though several grounds have been urged in the support affidavit, learned counsel for petitioner at the hearing exhorted one point in his campaign against the impugned detention order and that one point turns on delay in considering a representation sent qua impugned detention order.

6.Responding to the aforementioned submission, learned State Additional Public Prosecutor submitted to the contrary and placed before us a list of dates and what can be culled out by this Court from this list is as follows:

<i>Representation dated</i>	..	<i>17.08.2022</i>
<i>Representation received dated</i>	..	<i>22.08.2022</i>
<i>File submitted on</i>	..	<i>24.08.2022</i>
<i>Under Secretary dealt with on</i>	..	<i>24.08.2022</i>
<i>Deputy Secretary dealt with on</i>	..	<i>24.08.2022</i>
<i>Minister dealt with and file received on</i>	..	<i>05.09.2022</i>



WEB COPY



H.C.P.No.1646 of 2022

Rejected letter prepared on .. 05.09.2022

Rejection letter sent to the detenu on .. 05.09.2022

Govt. Holidays falls on: 28.08.2022, 03.09.2022, 04.09.2022

S.No.	Representation	S.No.6 to 7	S.No.9 to 10
1.	No. of days	01	11
2.	No. of holidays	00	03
	Total delay days	01	08
Total 9 days delay			

7.A careful perusal of the aforementioned list of dates brings to light that there are nine days delay in considering the representation. As regards making an effective representation against a preventive detention order, the same is a constitutional safeguard ingrained in Clause 5 of Article 22 of the Constitution of India. As this constitutional safeguard is hampered, the impugned detention order is vitiated. We also hasten to make it clear that there cannot be any straight jacket formula with regard to number of days within which a representation has to be disposed of. Delay in considering representation point has to be dealt with on a case to case basis. Considering the facts and circumstances of the case on hand and the nature of the matter, we find that this delay has caused infraction of the detenu's rights *qua* the



H.C.P.No.1646 of 2022

preventive detention order. We find that the delay of nine days excluding three public/government holidays is not justified and the point urged by the petitioner enures to the benefit of the petitioner.

8.Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 12.08.2022 bearing reference CPT.No.43/2022 made by the second respondent is set aside and the detenu Tmt.Indira, female, aged 62 years, wife of Thiru.Ranganathan is directed to be set at liberty forthwith, if not required in connection with any other case / cases. There shall be no order as to costs.

(M.S.,J.)

(M.N.K.,J.)

16.03.2023

Index : Yes

Neutral Citation : Yes

cse

P.S: Registry to forthwith communicate this order to Jail authorities in Women Special Prison, Puzhal, Chennai-600 066.



H.C.P.No.1646 of 2022

WEB COPY

To

- 1.The Secretary to Government, Home,
Prohibition and Excise Department,
Secretariat, Chennai – 600 009.
- 2.The District Collector and District Magistrate,
Chengelpet District,
Chengelpet.
- 3.The Superintendent of Police,
Chengelpet District.
- 4.The Superintendent,
Special Prison for Women,
Puzhal, Chennai.
- 5.The Inspector of Police,
PEW Police Station,
Chengelpet.
- 6.The Public Prosecutor,
High Court, Madras.



WEB COPY



H.C.P.No.1646 of 2022

**M.SUNDAR, J.,
and
M.NIRMAL KUMAR, J.,**

cse

H.C.P.No.1646 of 2022

16.03.2023

Page Nos.8/8