



H.C.P.No.1647 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.03.2023

CORAM

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

H.C.P.No.1647 of 2022

Suresh

.. Petitioner

Vs

- 1.State of Tamil Nadu
Rep. By its Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 9.
- 2.The Commissioner of Police,
Greater Chennai, Chennai.
- 3.The Inspector of Police,
E-5 Foreshore Estate Police Station,
Chennai.
- 4.The Superintendent,
Central Prison, Puzhal, Chennai.

.. Respondents

Petition filed under Article 226 of the Constitution of India
praying for issuance of a writ of habeas corpus to call for the entire
records relating to petitioner's brother detention under Tamil Nadu Act
14 of 9182 vide detention order dated 04.07.2022 on the file of the

Page Nos.1/7



H.C.P.No.1647 of 2022

second respondent herein made in proceedings BCDFGISSSV No.180/2022 and quash the same as illegal and consequently direct the respondents herein to produce the petitioner's brother namely Seenu (a) Seenivasan, aged 52 years, son of Murugan, before this Court and set him at liberty, now petitioner's brother detained at Central Prison, Puzhal, Chennai – 66.

For Petitioner : Mr.C.C.Chellappan
For Respondents : Mr.R.Muniyapparaj
Additional Public Prosecutor

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 brother of detenu assailing a 'preventive detention order dated 04.07.2022 bearing reference BCDFGISSSV No.180/2022' [hereinafter 'impugned detention order' for the sake of convenience and brevity]. To be noted, third 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.1647 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 'Goonda' within the meaning of Section 2(f) of Act 14 of 1982.

3. There are six adverse cases. The ground case which constitutes a large chunk of the substratum of the impugned detention order is Crime No.115 of 2022 on the file of E-5 Foreshore Estate Police Station for alleged offences under Sections 341, 294(b), 336, 307 and 506 (ii) of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity]. 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.



H.C.P.No.1647 of 2022

4. Mr.C.C.Chellappan, learned counsel for petitioner and Mr.R.Muniyapparaj, learned State Additional Public Prosecutor 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 submission, learned State Additional Public Prosecutor submitted to the contrary and placed before us the list of dates and the details are as follows:

<i>'Representation dated</i>	<i>..</i>	<i>17.08.2022 and</i>
		<i>18.08.2022</i>
<i>Representation received on</i>	<i>..</i>	<i>17.08.2022 and</i>
		<i>18.08.2022</i>
<i>File submitted on</i>	<i>..</i>	<i>24.08.2022</i>
<i>Under Secretary dealt with on</i>	<i>..</i>	<i>24.08.2022</i>
<i>Deputy Secretary dealt with on</i>	<i>..</i>	<i>24.08.2022</i>
<i>Minister dealt with on</i>	<i>..</i>	<i>27.08.2022</i>
<i>Rejection letter prepared on</i>	<i>..</i>	<i>27.08.2022</i>
<i>Rejection letter sent to the</i>		
<i>detenu on</i>	<i>..</i>	<i>29.08.2022'</i>

Page Nos.4/7



H.C.P.No.1647 of 2022

WEB COPY

7. A careful perusal of the list of dates brings to light that there is four 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. If this constitutional safeguard is hampered, it vitiates the impugned detention order. 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 the representation point has to be dealt with on a case to case basis. Considering the facts and circumstances of the case and the nature of the matter, we find that this delay has caused infraction of the detenu's rights *qua* the preventive detention order. We find that the delay of four days excluding four 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 04.07.2022 bearing reference BCDFGISSSV No.180/2022 made by the second respondent is set aside and the

Page Nos.5/7



H.C.P.No.1647 of 2022

detenu Thiru.Seenu @ Seenivasan, male, aged 52 years, son of Thiru.Murugan 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.)
14.03.2023

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

P.S: Registry to forthwith communicate this order to Jail authorities in Central Prison, Puzhal, Chennai.

To

- 1.The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 9.
- 2.The Commissioner of Police,
Greater Chennai, Chennai.
- 3.The Inspector of Police,
E-5 Foreshore Estate Police Station,
Chennai.
- 4.The Superintendent,
Central Prison, Puzhal, Chennai.
- 5.The Public Prosecutor,
High Court, Madras.

Page Nos.6/7



WEB COPY



H.C.P.No.1647 of 2022

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

mmi

H.C.P.No.1647 of 2022

14.03.2023

Page Nos.7/7