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H.C.P.No.1680 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.03.2023

CORAM

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

H.C.P.No.1680 of 2022

Thakira .. Petitioner
Vs.

1.The Addl. Chief Secretary to the Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 9.

2.The Commissioner of Police,
Greater Chennai.

3.The Superintendent of Prison,
Central Prison, Puzhal, Chennai – 66.

4.The Inspector of Police (Crime),
E3 Teynampet Police Station, 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 records in connection with the order of detention passed by the second respondent dated 30.07.2022 in Memo No.226/BCDFGISSSV/2022 against the petitioner's son Raguman, male, aged 24 years, S/o.Mohamed Haniffa, who is confined at Central Prison, Puzhal, Chennai and set aside the same and direct the respondents to produce the detenu before this Court and set him at liberty.

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For Petitioner : Mr.S.Senthilvel
For Respondents : Mr.E.Raj Thilak
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 mother of detenu assailing a 'preventive detention order dated 30.07.2022 bearing reference Memo No.226/BCDFGISSSV/2022' [hereinafter 'impugned detention order' for the sake of convenience and brevity]. To be noted, fourth respondent is the sponsoring authority and second respondent is the detaining authority as impugned detention order has been made by second respondent.

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



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the detenu is a 'Goonda' within the meaning of Section 2(f) of Act 14 of 1982.

3. There are four adverse cases. The ground case which is the sole substratum of the impugned detention order is Crime No.222 of 2022 on the file of E-3 Teynampet Police Station for alleged offences under Sections 294(b), 341, 336, 427, 392, 397 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.

4. Mr.S.Senthilvel, learned counsel for petitioner and Mr.E.Raj Thilak, learned State Additional Public Prosecutor for all respondents are before us.

5. Notwithstanding very many averments in support affidavit, learned counsel for petitioner submits that there are two representations, one dated 10.09.2022, another dated 13.09.2022 and there is a delay in considering the representations.

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6. Responding to this, learned State Additional Public Prosecutor placed before us list of dates with regard to second of the aforementioned representations (representation dated 13.09.2022) and the details are as follows:

<i>'Representation dated</i>	<i>..</i>	<i>13.09.2022</i>
<i>Representation received on dated</i>	<i>..</i>	<i>14.09.2022</i>
<i>File submitted on dated</i>	<i>..</i>	<i>17.09.2022</i>
<i>Under Secretary dealt with on</i>	<i>..</i>	<i>.....</i>
<i>Deputy Secretary dealt with on</i>	<i>..</i>	<i>17.09.2022</i>
<i>Minister (Electricity, Prohibition and Excise) dealt with on</i>	<i>..</i>	<i>21.09.2022</i>
<i>Rejection letter prepared on</i>	<i>..</i>	<i>21.09.2022</i>
<i>Rejection letter sent to the detenu</i>	<i>..</i>	<i>21.09.2022'</i>

7. If the intervening two Government/public holidays (17.09.2022 and 18.09.2022) are excluded, we still find that there is delay of four days in considering the representation. 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.

8. We make it clear that delay in considering the representation point has to be decided on a case to case basis. We have decided this



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matter on the facts and circumstances of the case on hand and therefore number of days will not be the sole parameter in deciding delay in considering the representation point qua challenge to preventive detention orders.

9. Apropos, the sequitur is, captioned HCP is allowed. Impugned detention order dated 30.07.2022 bearing reference Memo No.226/BCDFGISSSV/2022 made by the second respondent is set aside and the detenu Thiru.Raguman, male, aged 24 years, son of Thiru.Mohamed Haniffa 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.)
13.03.2023

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 Addl. Chief Secretary to the Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 9.

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2.The Commissioner of Police,
Greater Chennai.

3.The Superintendent of Prison,
Central Prison, Puzhal, Chennai – 66.

4.The Inspector of Police (Crime),
E3 Teynampet Police Station,
Chennai.

5.The Public Prosecutor
High Court, Madras.



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

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