



H.C.P.No.1772 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.1772 of 2022

Karthikeyan

.. Petitioner

Vs

1. The Secretary to Government (Home),
Prohibition and Excise Department,
Government of Tamil Nadu,
Fort St.George, Chennai - 600 009.
2. The District Collector and District Magistrate,
Office of the District Collector,
Viluppuram, Viluppuram District.
3. The Superintendent of Police,
Office of the Superintendent of Police,
Viluppuram, Viluppuram District.
4. The Inspector of Police,
Kandachipuram Police Station,
Viluppuram District.
5. The Superintendent,
Central Prison,
Cuddalore, Cuddalore District.

.. Respondents



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Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus to call for the records pursuant to the order in Rc.No.C2/2804/2022, dated 29.07.2022 passed by the second respondent and quash the same consequently produce the detenu Moorthy aged about 42 years S/o.Settu, before this Court and set him liberty, the detenu is now confined in Central Prison, Cuddalore, Cuddalore District.

For Petitioner : Mr.D.Arun
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 mother of detenu assailing a 'preventive detention order dated 29.07.2022 bearing reference Rc.No.C2/2804/2022' [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.

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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.The ground case which is the sole substratum of the impugned detention order is Crime No.191 of 2022 on the file of Kandachipuram Police Station for alleged offences under Sections 273, 294(b), 353, 506(ii), 307 of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] r/w Section 24(1) of Cigarette and Other Tobacco Products Act, 2003. 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.



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4. Mr.D.Arun, 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>16.08.2022</i>
<i>Representation received on</i>	<i>..</i>	<i>30.08.2022</i>
<i>File submitted on</i>	<i>..</i>	<i>13.09.2022</i>
<i>Under Secretary dealt with on</i>	<i>..</i>	<i>13.09.2022</i>
<i>Deputy Secretary dealt with on</i>	<i>..</i>	<i>13.09.2022</i>
<i>Minister dealt with and file</i>		
<i>received on</i>	<i>..</i>	<i>17.09.2022</i>
<i>Rejection letter prepared on</i>	<i>..</i>	<i>17.09.2022</i>
<i>Rejection letter sent to the</i>		
<i>detenu on</i>	<i>..</i>	<i>19.09.2022'</i>



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7. A careful perusal of the list of dates brings to light that there is ten 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 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 ten days excluding seven 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 29.07.2022 bearing reference Rc.No.C2/2804/2022 made by the second respondent is set aside and the detenu Thiru.Moorthy, male, aged 42 years, son of Thiru.Settu is

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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, Cuddalore, Cuddalore District.

To

1. The Secretary to Government,
Home, Prohibition and Excise Department,
Government of Tamil Nadu,
Fort St.George, Chennai - 600 009.
2. The District Collector and District Magistrate,
Office of the District Collector,
Viluppuram, Viluppuram District.
3. The Superintendent of Police,
Office of the Superintendent of Police,
Viluppuram, Viluppuram District.
4. The Inspector of Police,
Kandachipuram Police Station, Viluppuram District.
5. The Superintendent,
Central Prison,
Cuddalore, Cuddalore District.
- 6.The Public Prosecutor, High Court, Madras.

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

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