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H.C.P.No.1707 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.03.2023

CORAM

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

H.C.P.No.1707 of 2022

S.Emithra

.. Petitioner

Vs

1.The State Rep. By its Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George, Chennai - 9.

2.The Commissioner of Police,
Tambaram City.

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

4.The Inspector of Police,
T-9 Maraimalai Nagar Police Station,
Chengalpattu.

.. 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 leading to the detention of petitioner's husband namely S.Suriya, son of Sekar, aged about 24 years, under Act 14/1982 vide detention order dated 25.07.2022 on the file of the second respondent made in

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proceedings in BCDFGISSSV No.112/2022, quash the same, consequently direct the respondents herein to produce the body and person of S.Suriya, son of Sekar, aged about 24 years, who is lodged at Central Prison, Puzhal, Chennai before this Court and set him at liberty.

For Petitioner : Mr.C.D.Sugumar
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 wife of detenu assailing a 'preventive detention order dated 25.07.2022 bearing reference BCDFGISSSV No.112/2022' [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. There are five adverse cases. The ground case which is the sole substratum of the impugned detention order is Crime No.342 of 2022 on the file of T-9 Maraimalai Nagar Police Station for alleged offence under Section 394 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.C.D.Sugumar, learned counsel for petitioner and Mr.R.Muniyapparaj, learned State Additional Public Prosecutor assisted



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by Mr.M.Sylvester John, learned counsel, for all respondents are before us.

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5. This order has to be read in conjunction with and in continuation of earlier proceedings made in the previous listing on 13.03.2023 which reads as follows:

'Mr.C.D.Sugumar, learned counsel for petitioner submits that a representation dated 13.08.2022 has been sent qua the impugned detention order and the same has not been considered.

2.Learned State Additional Public Prosecutor requests for a short accommodation to ascertain and revert to this Court.

3.List the matter on 15.03.2023.'

6. Adverting to the earlier proceedings, learned State Additional Public Prosecutor has placed before us a list of dates, which reads as follows:

<i>'Representation dated</i>	<i>..</i>	<i>13.08.2022</i>
<i>Representation received on dated</i>	<i>..</i>	<i>18.08.2022</i>
<i>File submitted on dated</i>	<i>..</i>	<i>22.08.2022</i>
<i>Under Secretary dealt with on</i>	<i>..</i>	<i>22.08.2022</i>
<i>Deputy Secretary dealt with on</i>	<i>..</i>	<i>22.08.2022</i>
<i>Minister (Electricity, Prohibition</i>		



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and Excise) dealt with on .. 27.08.2022
Rejection letter prepared on .. 27.08.2022
Rejection letter sent to the detenu .. 27.08.2022
Govt. Holidays Falls on

19.08.2022, 20.08.2022, 21.08.2022'

7. We find that even if the intervening three public/Government holidays 19.08.2022, 20.08.2022 and 21.08.2022 are excluded there is not less than four days delay in considering the representation. We make it clear that the delay in considering the representation point in challenges to preventive detention orders cannot be decided quantitatively . It has to be decided qualitatively based on the facts, circumstances and the trajectory the representation has taken, in other words, it has to be decided on case to case basis. In the case on hand, we adopt such an approach and we find that four days delay vitiates the impugned detention order. We hasten to make it clear that there can be no straight jacket formula in terms of number of days delay as regards this point is concerned and therefore this order will not serve as precedent in all and every case.

8. Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 25.07.2022 bearing reference BCDFGISSSV No.112/2022 made by the second respondent is set aside and the



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detenu Thiru.Suriya, male, aged 24 years, son of Thiru.Sekar 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.)
15.03.2023

Index : Yes / No
Neutral Citation : Yes / No
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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,
Fort St.George, Chennai - 9.
- 2.The Commissioner of Police,
Tambaram City.
- 3.The Superintendent of Prison,
Central Prison, Puzhal, Chennai.
- 4.The Inspector of Police,
T-0 Maraimalai Nagar Police Station,
Chengalpattu.
- 5.The Public Prosecutor,
High Court, Madras.

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and
M.NIRMAL KUMAR, J.,**

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