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H.C.P.No.1922 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.03.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

and

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

H.C.P.No.1922 of 2022

Thakira

W/o.Mohamed Haniffa

.. Petitioner

Vs.

1.The Additional Chief Secretary to
the Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 600 009.

2.The Commissioner of Police,
Greater Chennai.

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

4.The Inspector of Police, Crime,
D-2 Anna Salai Police Station,
Chennai.

.. Respondents



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Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus calling for the records in connection with the order of detention passed by the second respondent dated 26.08.2022 in Memo No.252/BCDFGISSSV/2022 against the petitioner's son Rasul, male, aged 27 years, S/o.Mohammed 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.

For Petitioner : Mr.S.Senthilvel
For Respondents : Mr.R.Muniyapparaj
Additional Public Prosecutor
assisted by
M. Sylvester John, Advocate

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 26.08.2022 bearing reference 252/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 the 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 is one adverse case and one ground case. The ground case which constitutes a sizable chunk of the substratum of the impugned detention order is Crime No.132 of 2022 on the file of D-2 Anna Salai Police Station for alleged offences under Section 395 read with 397 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.



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4. Mr.S.Senthilvel, learned counsel on record for petitioner and Mr.R.Muniyapparaj, learned State Additional Public Prosecutor, assisted by Mr.M.Sylvester John, Advocate, 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 the details of the same are as follows:

<i>'Representation dated</i>	..	<i>28.01.2023</i>
<i>Representation received on dated</i>	..	<i>31.01.2023</i>
<i>File submitted on dated</i>	..	<i>06.02.2023</i>
<i>Under Secretary dealt with on</i>	..	<i>06.02.2023</i>
<i>Deputy Secretary dealt with on</i>	..	<i>06.02.2023</i>
<i>Minister dealt with and file</i>		
<i>received on</i>	..	<i>13.02.2023</i>
<i>Rejected letter prepared on</i>	..	<i>13.02.2023'</i>



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7. We find that even if the intervening four public/Government holidays 04.02.2023, 05.02.2023, 11.02.2023 and 12.02.2023 are excluded, there is a delay of 7 days 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 7 days delay vitiates the impugned detention order. We also hasten to make it clear that there can be no straight jacket formula in terms of number of days as regards this point is concerned and therefore, this order will not serve as precedent in all and every case.

8. Before concluding, we also remind ourselves that preventive detention is not a punishment and HCP is a high prerogative writ.

Apropos, the sequitur is, captioned HCP is allowed. Impugned detention order dated 26.08.2022 bearing reference



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252/BCDFGISSSV/2022 made by the second respondent is set aside and the detenu Thiru.Rasul, aged 27 years, son of Thiru.Mohammed Anifa is directed to be set at liberty forthwith, if not required in connection with any other case / cases.

[M.S., J.] [N.A.V., J.]
23.03.2023

Index : Yes
Speaking Order
Neutral Citation : Yes
gm

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

To

- 1.The Additional Chief Secretary to the Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 600 009.
- 2.The Commissioner of Police,
Greater Chennai.
- 3.The Superintendent of Prison,
Central Prison, Puzhal,
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- 4.The Inspector of Police, Crime,
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- 5.The Public Prosecutor
High Court, Madras.

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and
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