



WEB COPY



H.C.P.No.1944 of 2022

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.03.2023

CORAM

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

H.C.P.No.1944 of 2022

Joy Elisabeth @ Pachaiaammal
W/o.Lasar

.. Petitioner /
Mother of Detenu

Vs

1.The Addl. Chief Secretary to 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

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 in

Page Nos.1/8



H.C.P.No.1944 of 2022

connection with the order of detention passed by the second respondent dated 26.08.2022 in Memo No.254/BCDFGISSSV/2022 against the petitioner's son Santhosh @ Santhoshkumar, male aged 23 years, son of Lasar, 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 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 mother of detenu assailing a 'preventive detention order dated 26.08.2022 bearing reference BCDFGISSSV No.254/2022' [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.



H.C.P.No.1944 of 2022

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 no adverse case. The ground case which is the sole 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 Sections 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.

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, learned counsel for all respondents are before us.



H.C.P.No.1944 of 2022

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 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 on</i>	..	<i>13.02.2023</i>
<i>Rejected letter prepared on</i>	..	<i>13.02.2023</i>
<i>Rejection letter sent to the detenu on</i>	..	<i>14.02.2022</i>

Govt. Holidays falls on:

04.02.2023, 05.02.2023, 11.02.2023, 12.02.2023

S.No.	Representation	Column 6 to 7	Column 9 to 10
1.	No. of days	05	06
2.	No. of holidays	02	02
	No. of delay days	03	04
Total 7 days delay			



H.C.P.No.1944 of 2022

WEB COPY

7. We find that even if the intervening 4 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. Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 26.08.2022 bearing reference BCDFGISSSV No.254/2022 made by the second respondent is set aside and the detenu Thiru.Santhosh @ Santhoshkumar, aged 23 years, son of Thiru.Lasar, is



H.C.P.No.1944 of 2022

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.)

30.03.2023

Index : Yes

Neutral Citation : Yes

Speaking Order

gpa

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



H.C.P.No.1944 of 2022

WEB COPY To

- 1.The Addl. Chief Secretary to 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
- 5.The Public Prosecutor,
High Court, Madras.



WEB COPY



H.C.P.No.1944 of 2022

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

gpa

H.C.P.No.1944 of 2022

30.03.2023

Page Nos.8/8