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H.C.P.No.1990 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.04.2023

CORAM

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

H.C.P.No.1990 of 2022

Sofia

.. Petitioner

Vs

1.State of Tamil Nadu represented by
its Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George, Chennai – 600 009.

2.The Commissioner of Police,
The Greater Chennai City,
Vepery,
Chennai – 600 007.

3.The Superintendent of Prison,
Central Prison, Puzhal,
Chennai – 600 066.

4.The Inspector of Police,
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 calling for the records

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relating to the detention order in Memo No.256/BCDFGISSSV/2022 dated 26.08.2022 passed by the second respondent under the Tamil Nadu Act 14 of 1982 and set aside the same and direct the respondents to produce the petitioner's husband Rajesh, S/o.Sathiyendhiran, aged about 33 years, the detenu, now confined in the Central Prison, Puzhal, Chennai, before this Court and set the petitioner's husband Rajesh, S/o.Sathiyendhiran, aged about 33 years, the detenu herein at liberty.

For Petitioner	:	Mr.S.Senthilvel for Mr.J.Balamurugan
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 the detenu assailing a 'preventive detention order dated 26.08.2022 bearing reference BCDFGISSSV No.256/2022' [hereinafter 'impugned detention order' for the sake of convenience and brevity]. To be noted, fourth respondent is the sponsoring



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

3. There are two adverse cases. The ground case which is the sole substratum of the impugned detention order is Crime No.168 of 2022 on the file of D-2 Anna Salai Police Station for alleged offence under Sections 392, 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 representing Mr.J.Balamurugan, 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.

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>30.09.2022</i>
<i>Representation received on</i>	<i>..</i>	<i>03.10.2022</i>
<i>File submitted on</i>	<i>..</i>	<i>11.10.2022</i>
<i>Under Secretary dealt with on</i>	<i>..</i>	<i>11.10.2022</i>
<i>Deputy Secretary dealt with on</i>	<i>..</i>	<i>11.10.2022</i>
<i>Minister dealt with on</i>	<i>..</i>	<i>13.10.2022</i>



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Rejection letter prepared on .. 13.10.2022
Rejection letter sent to the
detenu on .. 13.10.2022

Govt. Holidays:

04.10.2022, 05.10.2022, 08.10.2022 and 09.10.2022'

7. A careful perusal of the list of dates brings to light that there is four 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 four days excluding four public/Government holidays is not justified and the point urged by the petitioner enures to the benefit of the petitioner.



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WEB COPY 10. Apropos, the sequitur is, captioned HCP is allowed.

Impugned detention order dated 26.08.2022 bearing reference BCDFGISSSV No.256/2022 made by the second respondent is set aside and the detenu Thiru.Rajesh, S/o.Thiru.Sathiyendhiran, aged about 33 years, 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.)
10.04.2023

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 Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George, Chennai – 600 009.
- 2.The Commissioner of Police,
The Greater Chennai City,
Vepery, Chennai – 600 007.
- 3.The Superintendent of Prison,
Central Prison, Puzhal, Chennai – 600 066.

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