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H.C.P.No.2000 of 2022

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.03.2023

CORAM

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

H.C.P.No.2000 of 2022

Govindan
S/o.Seenuvasan

.. Petitioner/brother of detenu

Vs

1. The State of Tamil Nadu,
Representen by its Secretary,
Department of Home Prohibition and Excise,
Fort St. George,
Chennai - 600 009.
2. The District Collector and District Magistrate,
Kallakurichi District,
Kallakurichi.
3. The Superintendent of Police,
Kallakurichi District,
Kallakurichi.
4. The Superintendent,
Central Prison,
Cuddalore,
Cuddalore District.

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5. The Inspector of Police,
Chinnasalem Police Station,
Chinnasalem Taluk,
Kallakurichi District.

.. 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 made in D.O.No.C2/54/2022 dated 26.09.2022 on the file of second Respondent herein and quash the same as illegal and direct the respondents to produce the detenu Thiru.Kumar, son of Seenuvasan, 25 years, now confined at Central Prison, Cuddalore before this court and set him at liberty.

For Petitioner	:	Mr.A.Ramesh
For Respondents	:	Mr.R.Muniyapparaj Additional Public Prosecutor assisted by Mr.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 brother of detenu assailing a 'preventive detention order dated 26.09.2022 bearing reference D.O.No.C2/54/2022' [hereinafter 'impugned detention order' for the sake of convenience and brevity]. To be noted, fifth



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respondent is the sponsoring 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 'Bootlegger' within the meaning of Section 2(b) of Act 14 of 1982.

3. There are two adverse cases and one ground case. The ground case which is the substratum of the impugned detention order is Crime No.271 of 2022 on the file of Chinnasalem Police Station for alleged offences under Sections 4(1)(i), 4(1)(aaa), 4(1-A) and 14A of 'The Tamil Nadu Prohibition Act, 1937 (Tamil Nadu Act No.10 of 1937)' [hereinafter 'Act 10 of 1937' for the sake of convenience and clarity]. Owing to the nature of the challenge to



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the impugned detention order, it is not necessary to delve into the factual matrix or be detained further by facts.

4. Mr.A.Ramesh, 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 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>03.10.2022</i>
<i>Representation received date</i>	..	<i>07.10.2022</i>
<i>File submitted on dated</i>	..	<i>21.10.2022</i>
<i>Under Secretary dealt with on</i>	..	<i>21.10.2022</i>



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Deputy Secretary dealt with on .. 21.10.2022
Minister dealt with and file received on .. 26.10.2022
Rejection letter prepared on .. 26.10.2022
Rejection letter sent to the detenu on .. 27.10.2022

Government Holidays Falls on:

08.10.2022, 09.10.2022, 15.10.2022, 16.10.2022, 22.10.2022, 23.10.2022 and 24.10.2022'

<i>S.No.</i>	<i>Representation</i>	<i>Column 6 to 7</i>	<i>Column 9 to 10</i>
1.	No. of days	13	4
2.	No. of holidays	4	3
	Total delay days	9	1
Total 10 Days Delay			

7. We find that even if the intervening 07 public/Government holidays 08.10.2022, 09.10.2022, 15.10.2022, 16.10.2022, 22.10.2022, 23.10.2022 and 24.10.2022 are excluded, there is a delay of 10 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 10 days delay vitiates the



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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 26.09.2022 bearing reference D.O.No.C2/54/2022 made by the second respondent is set aside and the detenu Thiru.Kumar, aged 25 years, son of Thiru.Seenuvasan, 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.)
28.03.2023

Index : Yes / No
Speaking / non-speaking
Neutral Citation : Yes / No
rsi

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

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To

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1. The Secretary,
Department of Home Prohibition and Excise,
Fort St. George,
Chennai - 600 009.
2. The District Collector and District Magistrate,
Kallakurichi District,
Kallakurichi.
3. The Superintendent of Police,
Kallakurichi District,
Kallakurichi.
4. The Superintendent,
Central Prison,
Cuddalore,
Cuddalore District.
5. The Inspector of Police,
Chinnasalem Police Station,
Chinnasalem Taluk,
Kallakurichi District.
6. The Public Prosecutor,
High Court, Madras.



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

rsi

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