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H.C.P.No.2176 of 2022

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.03.2023

CORAM

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

H.C.P.No.2176 of 2022

Neelaveni

.. Petitioner

Vs

The State represented by its

1.The Secretary to Government (Home),
Prohibition and Excise Department,
Government of Tamil Nadu,
Fort St. George, Chennai – 600 009.

2.The Commissioner of Police,
Avadi City.

3.The Superintendent of Prison,
Central Prison-II, Puzhal.

4.The Inspector of Police,
T-14 Mangadu 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 records pertaining to the

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order of detention dated 05.08.2022 passed by the second respondent in No.92/BCDFGISSSV/2022 and quash the same and produce the detenu Muruganandam S/o.Tamilventhan aged about 41 years before this Court and set him at liberty and the detenu now confined in Central Prison-II, Puzhal.

For Petitioner : Ms.M.Kruthika
For Respondents : Mr.R.Muniyapparaj
Additional Public Prosecutor

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 05.08.2022 bearing reference Memo No.92/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 impugned detention order has been made by second respondent.

2.Impugned detention order has been made under 'The Tamil Nadu



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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. The ground case which is the sole substratum of the impugned detention order is Crime No.526/2022 on the file of T-14 Mangadu Police Station for alleged offences under Sections 341, 294(b), 336, 427, 397 and 506(ii) 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. Ms.M.Kruthika, 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.



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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>27.08.2022</i>
<i>Representation received dated</i>	..	<i>03.10.2022</i>
<i>File submitted on dated</i>	..	<i>12.10.2022</i>
<i>Under Secretary dealt with on</i>	..	<i>12.10.2022</i>
<i>Deputy Secretary dealt with on</i>	..	<i>12.10.2022</i>
<i>Minister dealt with on</i>	..	<i>18.10.2022</i>
<i>Rejection letter prepared on</i>	..	<i>18.10.2022</i>
<i>Rejection letter sent to the detenu on</i>	..	<i>18.10.2022</i>

Govt. Holidays falls on:

*04.10.2022, 05.10.2022, 08.10.2022, 09.10.2022,
15.10.2022 and 16.10.2022*



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S.No.	Representation	Column 6 to 7	Column 9 to 10
1.	No. of days	08	05
2.	No. of holidays	04	02
	Total delay days	04	03
Total 7 days delay			

7. We find that even if the intervening six public/Government holidays 04.10.2022, 05.10.2022, 08.10.2022, 09.10.2022, 15.10.2022 and 16.10.2022 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.



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8.Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 05.08.2022 bearing reference Memo No.92/BCDFGISSSV/2022 made by the second respondent is set aside and the detenu Thiru.Muruganandam, male, aged 41 years, son of Thiru.Tamilventhan 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.)

27.03.2023

Index : Yes / No

Neutral Citation : Yes / No

Speaking Order/Non-Speaking Order

cse

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



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- 5.The Public Prosecutor,
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**M.SUNDAR, J.,
and
M.NIRMAL KUMAR, J.,**

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