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H.C.P.No.2154 of 2022

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.04.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

H.C.P.No.2154 of 2022

Chithra

Wife of Elumalai

.. Petitioner

Wife of the detenu

Vs

1.The State of Tamil Nadu

Rep. by its Secretary to Government
Prohibition and Excise Department,
Fort St.George, Chennai – 9.

2.The District Collector and District Magistrate

Collector Office
Kallakurichi District

3. The Superintendent of Police

Kallakurichi District

4. The Superintendent

Central Prison, Cuddalore District

5. The Inspector of Police

Thirunavalur Police Station
Kallakurichi District

... Respondents

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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 relating to the petitioner's husband detention under Tamil Nadu Act 14 of 1982 vide detention order dated 15.09.2022 on the file of the 2nd respondent in pursuance of his order D.O.No.C2/49/2022 and quash the same as illegal and consequently direct the respondents herein to produce the petitioner's husband namely Thiru.Elumalai alias Kannukutty, S/o.Kattayan aged 55 years before this Court and set the petitioner's husband at liberty from detention, now the petitioner's husband detained at Central Prison, Cuddalore District.

For Petitioner : Mr.T.Meganathan
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 detenu assailing a 'preventive detention order dated 15.09.2022 bearing reference D.O.No.C2/49/2022' [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 three adverse cases. The ground case which is the sole substratum of the impugned detention order is Crime No.358 of 2022 on the file of Thirunavalur Police Station, Kallakurichi District for alleged offences under Sections 4(1)(aaa) and 4(1-A) of Tamil Nadu Prohibition Act, 1937. 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.T.Meganathan, 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>24.09.2022</i>
<i>Representation received on</i>	..	<i>27.09.2022</i>
<i>File submitted on</i>	..	<i>17.10.2022</i>
<i>Under Secretary dealt with on</i>	..	<i>17.10.2022</i>
<i>Deputy Secretary dealt with on</i>	..	<i>17.10.2022</i>
<i>Minister dealt with and file received on</i>	..	<i>18.10.2022</i>
<i>Rejected letter prepared on</i>	..	<i>18.10.2022</i>
<i>Rejection letter sent to the detenu on</i>	..	<i>19.10.2022</i>



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Govt. Holidays falls on:

01.10.2022, 02.10.2022, 04.10.2022, 05.10.2022, 08.10.2022, 09.10.2022, 15.10.2022 and 16.10.2022

S.No.	Representation	Column 6 to 7	Column 9 to 10
1.	No. of days	19	-
2.	No. of holidays	8	-
	No. of delay days	11	-
Total 11 days delay			

7. We find that even if the intervening 8 public/Government holidays 01.10.2022, 02.10.2022, 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 11 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 a case to case basis. In the case on hand, we adopt such an approach and we find that 11 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



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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 15.09.2022 bearing reference D.O.No.C2/49/2022 made by the second respondent is set aside and the detenu Thiru.Elumalai alias Kannukutty, aged 55 years, son of Thiru.Kattayan, 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.)

20.04.2023

Index : Yes

Neutral Citation : Yes

Speaking Order

gpa

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 to Government
Prohibition and Excise Department,
Fort St.George, Chennai – 9.
2. The District Collector and District Magistrate
Collector Office
Kallakurichi District
3. The Superintendent of Police
Kallakurichi District
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5. The Inspector of Police
Thirunavalur Police Station
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6. The Public Prosecutor,
High Court, Madras.



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

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