



H.C.P.No.2143 of 2022

IN 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.2143 of 2022

Sivagami
W/o.Venkatesan

.. Petitioner

Vs.

1. The State Represented by
The Secretary to Government
Government of Tamil Nadu
Home, Prohibition and Excise IX
Secretariat, St.George Fort,
Chennai-600 009.
2. The District Collector cum District Magistrate
The District Collectorate
Kallakurichi & District.
3. The Superintendent of Police
The Superintendent of Police Office
Kallakurichi District.
4. The Superintendent of Prison
Central Prison
Cuddalore.

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5. The Inspector of Police
Chinnasalem Police Station
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 of the second respondent in with reference to detention order D.O.No.C2/55/2022 dated 26.09.2022 setting aside the order of detention passed therein and directing the respondent to produce the detenu by namely Venkatesan, son of Marimuthu, aged about 45 years before this Hon'ble Court, now detained in Central Jail at Cuddalore and setting him at liberty.

For Petitioner	:	Mr.V.Gunasekar
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 wife of the detenu assailing a 'preventive detention order dated 26.09.2022 bearing reference D.O.No.C2/55/2022' [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 the 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. This solitary case which is the sole substratum of the impugned detention order is Crime No.266 of 2022 on the file of Chinnasalem Police Station for the alleged offences under Sections 4(1)(i), 4(1)(aaa), 4(1-A) and 14A of 'the Tamil Nadu Prohibition Act, 1937' [hereinafter 'TNP Act' for the sake of convenience and clarity]. Owing to the nature of the challenge to the impugned detention order, it is not



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necessary to delve into the factual matrix or be detained further by facts.

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4. Mr.V.Gunasekar, 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:



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Representation dated	--	18.10.2022
Representation received dated	--	01.11.2022
File submitted on dated	--	18.11.2022
Under Secretary dealt with on	--	19.11.2022
Deputy secretary dealt with on	--	18.11.2022
Minister dealt with and file received on	--	21.11.2022
Rejected letter prepared on	--	21.11.2022
Rejection letter sent to the detenu on	--	22.11.2022

Govt Holidays falls on:

05.11.2022, 06.11.2022, 12.11.2022, 13.11.2022, 19.11.2022, 20.11.2022

S.No	Representation	Column 6 to 7	Column 9 to 10
1	No of days	16	2
2	No of holidays	4	2
	Total delay days	12	0
Total 12 Days Delay			

7. We find that even if the intervening 6 public/Government holidays 05.11.2022, 06.11.2022, 12.11.2022, 13.11.2022, 19.11.2022 and 20.11.2022 are excluded, there is a delay of 12 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



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adopt such an approach and we find that 12 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. Before concluding, we also remind ourselves that preventive detention is not a punishment and HCP is a high prerogative writ.

9. Apropos, the sequitur is, captioned HCP is allowed. Impugned detention order dated 26.09.2022 bearing reference D.O.No.C2/55/2022 made by the second respondent is set aside and the detenu Thiru.Venkatesan, aged 45 years, son of Thiru.Marimuthu, 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.)

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Index : Yes

Speaking

Neutral Citation : Yes

mk

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

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To
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Government of Tamil Nadu
Home, Prohibition and Excise IX
Secretariat, St.George Fort,
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2. The District Collector cum District Magistrate
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5. The Inspector of Police
Chinnasalem Police Station
Kallakurichi District.
6. The Public Prosecutor
High Court, Madras.



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

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