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H.C.P.No.2257 of 2022

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.2257 of 2022

Prabhu

.. Petitioner

Vs

- 1.The Secretary to the Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai – 600 009.
- 2.The District Collector & District Magistrate,
Tirupathur District,
Tirupathur – 635 601.
- 3.The Superintendent of Police,
Tirupathur District, Tirupathur.
- 4.The Superintendent of Prison,
Central Prison, Vellore-2.
- 5.The Inspector of Police,
Vaniyambadi PEW Police Station,
Tirupathur District.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying

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for issuance of a writ of habeas corpus to call for the records in connection with the order of detention passed by the second respondent dated 26.10.2022 in C3/D.O.No.56/2022 against the petitioner brother Umapathy, Male, aged 43 years S/o.Rajamani, who is confined at Central Prison, Vellore and set aside the same and direct the respondents to produce the detenu before dthis Court and set him at liberty.

For Petitioner : Mr.D.Balaji

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 brother of detenu assailing a 'preventive detention order dated 26.10.2022 bearing reference C3/D.O.No.56/2022' [hereinafter 'impugned detention order' for the sake of convenience and brevity]. To be noted, fifth 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 'Bootlegger' within the meaning of Section 2(b) 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.383/2022 on the file of Tirupathur Prohibition Enforcement Wing for alleged offences under Sections 4(1)(aaa), 4(1)(h), 4(1-A)ii 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.

4. Mr.D.Balaji, 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>26.10.2022</i>
<i>Representation received on</i>	..	<i>31.10.2022</i>
<i>File submitted on</i>	..	<i>04.11.2022</i>
<i>Under Secretary dealt with on</i>	..	<i>04.11.2022</i>
<i>Deputy Secretary dealt with on</i>	..	<i>04.11.2022</i>
<i>Minister dealt with on</i>	..	<i>08.11.2022</i>
<i>Rejection letter prepared on</i>	..	<i>08.11.2022</i>
<i>Rejection letter sent to the detenu on</i>	..	<i>08.11.2022</i>

Govt. Holidays falls on:

05.11.2022, 06.11.2022, 19.11.2022, 20.11.2022



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S.No.	Representation	Column 6 to 7	Column 9 to 10
1.	No. of days	03	03
2.	No. of holidays	00	02
	Total delay days	03	01
Total 04 days delay			

7. We find that even if the intervening six public/Government holidays 05.11.2022, 06.11.2022, 19.11.2022 and 20.11.2022 are excluded, there is a delay of 4 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 4 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 26.10.2022 bearing reference C3/D.O.No.56/2022 made by the second respondent is set aside and the detenu Thiru.Umapathy, male, aged 43 years, son of Thiru.Rajamani 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 / 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, Vellore.



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- 5.The Inspector of Police,
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Tirupathur District.
- 6.The Public Prosecutor,
High Court, Madras.



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

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