



H.C.P.No.2348 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.04.2023

CORAM

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

H.C.P.No.2348 of 2022

T.M.T.Gandhi

.. Petitioner

Vs

- 1.The State of Tamil Nadu represented 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.
- 5.The Inspector of Police,
All Women Police Station,
Kallakurichi, 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.C2/63/2022 dated 28.10.2022 on the file of second

Page Nos.1/7



H.C.P.No.2348 of 2022

respondent herein and quash the same as illegal and direct the respondents to produce the detenu Thiru.Kumaresan, son of Vasudevan, 35 years, now confined at Central Prison, Cuddalore, before this Court and set him at liberty.

For Petitioner : Mr.S.Shankar
for Mr.A.Ramesh

For Respondents : Mr.E.Raj Thilak
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 mother of the detenu assailing a 'preventive detention order dated 28.10.2022 bearing reference D.O.No.C2/63/2022' [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 Prevention of Dangerous Activities of Bootleggers, Cyber law



H.C.P.No.2348 of 2022

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 'Sexual Offender' within the meaning of Section 2(ggg) of Act 14 of 1982.

3. The ground case which is the sole substratum of the impugned detention order is Crime No.22 of 2022 on the file of All Women Police Station, Kallakurichi, for alleged offence under Section 342 of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] and Sections 5(l), 5(m), 5(n) r/w Section 6 of Protection of Children from Sexual Offences Act, 2012. 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.S.Shankar, learned counsel representing Mr.A.Ramesh, learned counsel on record for petitioner and Mr.E.Raj Thilak, learned State Additional Public Prosecutor for all respondents are before us.

Page Nos.3/7



H.C.P.No.2348 of 2022

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 submission, learned State Additional Public Prosecutor submitted to the contrary and placed before us the list of dates and the details are as follows:

<i>'Representation dated</i>	<i>..</i>	<i>09.11.2022</i>
<i>Representation received dated</i>	<i>..</i>	<i>11.11.2022</i>
<i>File submitted on dated</i>	<i>..</i>	<i>29.11.2022</i>
<i>Under Secretary dealt with on</i>	<i>..</i>	<i>29.11.2022</i>
<i>Deputy Secretary dealt with on</i>	<i>..</i>	<i>29.11.2022</i>
<i>Minister dealt with and file</i>		
<i>received on</i>	<i>..</i>	<i>02.12.2022</i>
<i>Rejection letter prepared on</i>	<i>..</i>	<i>02.12.2022</i>
<i>Rejection letter sent to the</i>		
<i>detenu on</i>	<i>..</i>	<i>05.12.2022</i>

Govt. Holidays:

12.11.2022, 13.11.2022, 19.11.2022, 20.11.2022, 26.11.2022, 27.11.2022, 03.12.2022 and 04.12.2022'



H.C.P.No.2348 of 2022

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7. A careful perusal of the list of dates brings to light that there is thirteen days delay in considering the representation. As regards making an effective representation against a preventive detention order, the same is a constitutional safeguard ingrained in Clause 5 of Article 22 of the Constitution of India. If this constitutional safeguard is hampered, it vitiates the impugned detention order. We also hasten to make it clear that there cannot be any straight jacket formula with regard to number of days within which a representation has to be disposed of. Delay in considering the representation point has to be dealt with on case to case basis. Considering the facts and circumstances of the case and the nature of the matter, we find that this delay has caused infraction of the detenu's rights *qua* the preventive detention order. We find that the delay of thirteen days excluding eight public/Government holidays is not justified and the point urged by the petitioner enures to the benefit of the petitioner.

8. Apropos, the sequitur is, captioned HCP is allowed. Impugned detention order dated 28.10.2022 bearing reference D.O.No.C2/63/2022 made by the second respondent is set aside and

Page Nos.5/7



H.C.P.No.2348 of 2022

the detenu Thiru.Kumaresan, S/o.Thiru.Vasudevan, aged 35 years, 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.)
24.04.2023

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

To

- 1.The Secretary to Government,
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,
All Women Police Station,
Kallakurichi, Kallakurichi District.
- 6.The Public Prosecutor,
High Court, Madras.

Page Nos.6/7



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H.C.P.No.2348 of 2022

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

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H.C.P.No.2348 of 2022

24.04.2023

Page Nos.7/7