



H.C.P.No.2439 of 2022

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.04.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

H.C.P.No.2439 of 2022

Thenmozhi
W/o.Balu

.. Petitioner /
Mother of the detenu

Vs

1.The State of Tamilnadu
Rep. By its Secretary to Government
Home, Prohibition and Excise Department,
Fort St.George, Chennai – 600 009.

2.The Commissioner of Police
Greater Chennai
Chennai

3. The Superintendent of Prison
Central Prison-I
Puzhal, Chennai – 66

4. Inspector of Police
D5, Marina Police Station
Chennai

... Respondents

Page Nos.1/8



H.C.P.No.2439 of 2022

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 leading to the detention of the petitioner's son Vinoth son of Balu, male aged about 34 years, presently lodged in Central Prison-I, Puzhal at Chennai who has been detained under Act 14/92 as a “Goonda” vide detention order dated 01.09.2022 made in Memo No.270/BCDFGISSSV/2022 by the second respondent herein and quash the same and consequently direct the respondents herein to produce the body and person of the detenu before this Court and set him at liberty.

For Petitioner : Mr.V.Paarthiban
for Mr.M.Rajavelu

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 mother of detenu assailing a 'preventive detention order dated 01.09.2022 bearing reference 270/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

Page Nos.2/8



H.C.P.No.2439 of 2022

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 'Goonda' within the meaning of Section 2(f) 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.188 of 2022 on the file of D5 Marina Police Station for alleged offences under Sections 341, 294(b), 326, 307, 397 and 506(ii) of 'Indian Penal Code, 1860 (Act 45 of 1860)' ['IPC' for brevity]. 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.



H.C.P.No.2439 of 2022

4.Mr.V.Paarthiban, learned counsel representing the 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>12.11.2022</i>
<i>Representation received on</i>	..	<i>15.11.2022</i>
<i>File submitted on</i>	..	<i>22.11.2022</i>
<i>Under Secretary dealt with on</i>	..	<i>22.11.2022</i>
<i>Deputy Secretary dealt with on</i>	..	<i>22.11.2022</i>
<i>Minister dealt with on</i>	..	<i>25.11.2022</i>
<i>Rejected letter prepared on</i>	..	<i>25.11.2022</i>



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H.C.P.No.2439 of 2022

Rejection letter sent to the detenu on.. 25.11.2022

Govt. Holidays falls on:

19.11.2022, 20.11.2022, 26.11.2022, 27.11.2022

S.No.	Representation	Column 6 to 7	Column 9 to 10
1.	No. of days	06	02
2.	No. of holidays	02	-
	No. of delay days	04	02
Total 6 days delay			

7.We find that even if the intervening 4 public/Government holidays 19.11.2022, 20.11.2022, 26.11.2022 and 27.11.2022 are excluded, there is a delay of 6 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 6 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.



H.C.P.No.2439 of 2022

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8.Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 01.09.2022 bearing reference 270/BCDFGISSSV/2022 made by the second respondent is set aside and the detenu Thiru.Vinoth, aged 34 years, son of Thiru.Balu, 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.)

17.04.2023

Index : Yes

Neutral Citation : Yes

Speaking Order

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



H.C.P.No.2439 of 2022

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1. The Secretary to Government
Home, Prohibition and Excise Department,
Fort St.George, Chennai – 600 009.
2. The Commissioner of Police
Greater Chennai
Chennai
3. The Superintendent of Prison
Central Prison-I
Puzhal, Chennai – 66
4. Inspector of Police
D5, Marina Police Station
Chennai
5. The Public Prosecutor,
High Court, Madras.



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H.C.P.No.2439 of 2022

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

gpa

H.C.P.No.2439 of 2022

17.04.2023

Page Nos.8/8