



H.C.P.No.2392 of 2022

IN 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.2392 of 2022

A.Kristinamary

.. Petitioner

Vs

- 1.The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai – 600 009.
- 2.The State rep. By
The District Collector and District Magistrate,
Kallakurichi District.
- 3.The Superintendent of Police,
Kallakurichi District.
- 4.The Superintendent of Prison,
Central Prison, Cuddalore.
- 5.The Inspector of Police,
Kallakurichi 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 in
connection with the order of detention passed by the second

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respondent dated 04.11.2022 in D.O.No.C2/64/2022 against the petitioner's husband Amburose, S/o.Sakkaraiyas, aged 56 years, petitioner's husband at present is confined at Central Prison, Cuddalore and set aside the same and direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner : Mr.T.Balachandran
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 the detenu assailing a 'preventive detention order dated 04.11.2022 bearing reference D.O.No.C2/64/2022' [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



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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. The ground case which is the sole substratum of the impugned detention order is Crime No.441 of 2022 on the file of Kallakurichi Police Station for alleged offences under Sections 4(1)(aaa), 4(1-g) 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.

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

'Representation received dated	..	21.11.2022
File submitted on dated	..	05.12.2022
Under Secretary dealt with on	..	05.12.2022
Deputy Secretary dealt with on	..	05.12.2022
Minister dealt with and file		
received on	..	07.12.2022
Rejection letter prepared on	..	07.12.2022
Rejection letter sent to the		
detenu on	..	08.12.2022

Govt. Holidays fall on:

26.11.2022, 27.11.2022, 03.12.2022 and 04.12.2022'



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7. A careful perusal of the list of dates brings to light that there is ten 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 ten days excluding four 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 04.11.2022 bearing reference D.O.No.C2/64/2022 made by the second respondent is set aside and the detenu Thiru.Amburose, aged 56 years, S/o.Thiru.Sakkaraiyas, is



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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 / No
Neutral Citation : Yes / No
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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,
Home, Prohibition and Excise Department,
Secretariat, Chennai – 600 009.
- 2.The District Collector and District Magistrate,
Kallakurichi District.
- 3.The Superintendent of Police,
Kallakurichi District.
- 4.The Superintendent of Prison,
Central Prison, Cuddalore.
- 5.The Inspector of Police,
Kallakurichi 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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