



WEB COPY



H.C.P.No.2459 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.2459 of 2022

Keerthika
W/o.Ajith

.. Petitioner

Vs.

1. The State of Tamil Nadu
Rep. by Principal Secretary to Government
Home, Prohibition & Excise Department
Fort St.George
Chennai-600 009.
2. The Commissioner of Police
Greater Chennai
Vepery, Chennai.
3. The Superintendent of Prison
Central Prison, Puzhal
Chennai.
4. The Inspector of Police
V-5, Thirumangalam Police Station
Chennai-600 007.

.. Respondents



H.C.P.No.2459 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 records made in No.386/BCDFGISSSV/2022 dated 22.10.2022 on the file of 2nd respondent herein and quash the same as illegal and direct the respondent to produce detenu viz., Ajesh @ Ajith, son of Gopi (late) aged about 22 years, now confined in Central Prison, Puzhal, before this Hon'ble Court and set him at liberty.

For Petitioner : Mr.S.Senthilvel
representing Mr.V.Arunkumar
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 wife of the detenu assailing a 'preventive detention order dated 22.10.2022 bearing reference No.386/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 is the detaining authority as the impugned detention order has been made by second respondent.

Page Nos.2/8



H.C.P.No.2459 of 2022

WEB COPY

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 four adverse cases and one ground case. The ground case which is the sole substratum of the impugned detention order is Crime No.280 of 2022 on the file of V-5 Thirumangalam Police Station for the alleged offences under Sections 341, 294(b), 323, 336, 397 and 506(ii) of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity]. 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.2459 of 2022

4. Mr.S.Senthilvel, learned counsel representing the counsel on record for petitioner and Mr.E.Raj Thilak, learned State Additional Public Prosecutor 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 representations 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:

5	Representation dated	- 04/11/2022	04/11/2022
6	Representation received on dated	- 11/11/2022	09/12/2022
7	File submitted on dated	- 12/11/2022	12/12/2022
8	Under Secretary dealt with on	- 15/11/2022	12/12/2022
9	Deputy Secretary dealt with on	- 15/11/2022	12/12/2022
10	Minister dealt with and File received on	- 16/11/2022	12/12/2022
11	Rejection Letter prepared on	- 16/11/2022	12/12/2022
12	Rejection Letter sent to the detainee	- 16/11/2022	12/12/2022

Good Holidays Falls on 16/11/2022, 12/12/2022.
20/11/2022, 14/12/2022, 17/12/2022 & 18/12/2022.

Representation I	Column No 6-7	Column No 8-10
No. of days	03	01
No. of Holidays	12	00
Total No. of days	01	01
Delay	12 days delay	

Representation II	Column No 6-7	Column No 8-10
No. of days	09	03
No. of Holidays	12	03
Total No. of days	07	01
Delay	36 days delay	



H.C.P.No.2459 of 2022

7. We find that even if the intervening 6 public/Government holidays

12.11.2022, 13.10.2022, 10.12.2022, 11.12.2022, 17.12.2022 and 18.12.2022 are excluded, there is a delay of 2 days and 8 days in considering the representations. 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 2 days and 8 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 where delay in considering representation qua a preventive detention order is raised.

8. Before concluding, we also remind ourselves that preventive detention is not a punishment and HCP is a high prerogative writ.



H.C.P.No.2459 of 2022

WEB COPY

9. Apropos, the sequitur is, captioned HCP is allowed. Impugned detention order dated 22.10.2022 bearing reference No.386/BCDFGISSSV/2022 made by the second respondent is set aside and the detenu Thiru.Ajesh @ Ajith, aged 22 years, son of Thiru.Gopi, 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

Speaking

Neutral Citation : Yes

mk

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



H.C.P.No.2459 of 2022

WEB COPY

To

1. The State of Tamil Nadu
Rep. by Principal Secretary to Government
Home, Prohibition & Excise Department
Fort St.George
Chennai-600 009.
2. The Commissioner of Police
Greater Chennai
Vepery, Chennai.
3. The Superintendent of Prison
Central Prison, Puzhal
Chennai.
4. The Inspector of Police
V-5, Thirumangalam Police Station
Chennai-600 007.
5. The Public Prosecutor
High Court, Madras.



WEB COPY



H.C.P.No.2459 of 2022

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

mk

H.C.P.No.2459 of 2022

24.04.2023

Page Nos.8/8