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H.C.P.No.2403 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.06.2023

Coram

THE HON'BLE MR.JUSTICE **M.SUNDAR**
and
THE HON'BLE MRS. JUSTICE **K. GOVINDARAJAN THILAKAVADI**

H.C.P.No.2403 of 2022

Ranganathan

.. Petitioner

VS

- 1.The State of Tamil Nadu
Rep. By its Secretary to Government,
Prohibition and Excise Department, (Home)
Chennai – 9.
- 2.The District Collector and District Magistrate,
Detaining Authority, Office of the District Collector,
Viluppuram District – 605 602.
- 3.The Superintendent of Police,
Office of the Superintendent of Police,
Viluppuram District – 605 602.
- 4.The Superintendent of Prison,
Special Prison for Women,
Vellore 632 002.
- 5.The Inspector of Police,
Kiliyanur Police Station,
Villuppuram 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 relating to the detenue's detention order passed by the 2nd respondent vide R.C.No.C2/27721/2022 dated 01.11.2022 and set aside the same and produce the petitioner's sister-in-law Meenatchi, W/o. Thirumalai,



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female, aged 40 years, now detained in Special Prison for Women, Vellore before this Court and set her at liberty forthwith.

For Petitioner : Mr.K.Madhan
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-in-law of the detenue assailing a 'preventive detention order dated 01.11.2022 bearing reference Rc.No.C2/27721/2022' [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 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



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the detainee is a 'Bootlegger' within the meaning of Section 2(b) of Act 14 of 1982.

3. The ground case which is the sole substratum of the impugned detention order is Crime No.263 of 2022 on the file of Kiliyanur Police Station for alleged offence under Sections 4(1)(aaa) 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.K.Madhan, 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.

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.



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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>18.11.2022</i>
<i>Representation received on</i>	<i>..</i>	<i>21.11.2022</i>
<i>File submitted on dated</i>	<i>..</i>	<i>07.12.2022</i>
<i>Under Secretary dealt with on</i>	<i>..</i>	<i>07.12.2022</i>
<i>Deputy Secretary dealt with on</i>	<i>..</i>	<i>07.12.2022</i>
<i>Minister dealt with and file</i>		
<i>received on</i>	<i>..</i>	<i>08.12.2022</i>
<i>Rejection letter prepared on</i>	<i>..</i>	<i>08.12.2022</i>
<i>Rejection letter sent to the</i>		
<i>detenu on</i>	<i>..</i>	<i>09.12.2022</i>

Govt. Holidays:

26.11.2022, 27.11.2022, 03.12.2022 and 04.12.2022'

7. A careful perusal of the list of dates brings to light that there is eleven 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



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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 eleven 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 01.11.2022 bearing reference Rc.No.C2/27721/2022 made by the second respondent is set aside and the detenu Tmt. Meenatchi, aged 40 years, wife of Thiru.Thirumalai, 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.) (K.G.T.,J.)
06.06.2023

Index : Yes
Neutral Citation : Yes
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P.S: Registry to forthwith communicate this order to Jail authorities in Special Prison for Women, Vellore.



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To

- 1.The Secretary to Government,
Prohibition and Excise Department, (Home)
Chennai – 9.
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Detaining Authority, Office of the District Collector,
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- 6.The Public Prosecutor
High Court, Madras.



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**M.SUNDAR, J.,
and
K. GOVINDARAJAN THILAKAVADI, J.,**

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