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H.C.P.No.2451 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.2451 of 2022**

Devi Karthikeyan  
D/o.Muthu

.. Petitioner

Vs

1.The Commissioner of Police  
Greater Chennai  
Chennai – 600 007

2. The Additional Chief Secretary to Government  
Home, Prohibition & Excise Department  
Chennai – 600 009

3. The Superintendent  
Central Prison  
Puzhal, Chennai – 600 066

4. Inspector of Police  
Team – 31, Bank Fraud Investigation Wing  
Central Crime Branch-1  
Greater Chennai Police  
Vepery, Chennai – 600 007

... Respondents

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Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus to produce the body of the petitioner's husband namely R.Karthikeyan, aged about 48 years, who is detained in 3<sup>rd</sup> respondent/the Superintendent, Central Prison-Puzhal, Chennai before this Court and set him at liberty forthwith by calling for the records pursuant to the detention order dated 12.10.2022 made in Memo No.351/BCDFGISSSV/2022 on the file of the 1<sup>st</sup> respondent herein and quash the same.

For Petitioner : Mr.M.Mohamed Riyaz  
for Mr.B.L.S.Prasad

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 detenu assailing a 'preventive detention order dated 12.10.2022 bearing reference No.351/BCDFGISSSV/2022' [hereinafter 'impugned detention order' for the sake of convenience and brevity]. To be noted, fourth respondent is the sponsoring authority and first respondent is

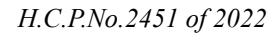


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the detaining authority as impugned detention order has been made by first respondent.

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 is no adverse case. The solitary case which is the sole substratum of the impugned detention order is Crime No.134 of 2022 on the file of Bank Fraud Investigation Wing, Central Crime Branch I, Greater Chennai Police, Vepery for alleged offences under Sections 120(B), 420, 465, 467, 468 and 471 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



4. Mr. Mohamed Riyaz, learned counsel appearing on behalf of 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>Nil</i>        |
| <i>Representation received on</i>     | .. | <i>17.11.2022</i> |
| <i>File submitted on</i>              | .. | <i>28.11.2022</i> |
| <i>Under Secretary dealt with on</i>  | .. | <i>28.11.2022</i> |
| <i>Deputy Secretary dealt with on</i> | .. | <i>28.11.2022</i> |
| <i>Minister dealt with on</i>         | .. | <i>01.12.2022</i> |
| <i>Rejected letter prepared on</i>    | .. | <i>01.12.2022</i> |



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*Rejection letter sent to the detenu on.. 01.12.2022*

Govt. Holidays falls on:

19.11.2022, 20.11.2022, 26.11.2022 and 27.11.2022

| S.No.              | Representation    | Column 6 to 7 | Column 9 to 10 |
|--------------------|-------------------|---------------|----------------|
| 1.                 | No. of days       | 10            | 02             |
| 2.                 | No. of holidays   | 04            | -              |
|                    | No. of delay days | 06            | 02             |
| Total 8 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 8 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 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.



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8.Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 12.10.2022 bearing reference No.351/BCDFGISSSV/2022 made by the second respondent is set aside and the detenu Thiru.R.Karthikeyan, aged 48 years, son of Thiru.Rajamanickam, 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 /No

Neutral Citation : Yes /No

Speaking Order/Non-speaking order

*gpa*

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



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To

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1. The Commissioner of Police  
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Chennai – 600 007
2. The Additional Chief Secretary to Government  
Home, Prohibition & Excise Department  
Chennai – 600 009
3. The Superintendent  
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5. The Public Prosecutor,  
High Court, Madras.



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

*gpa*

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