



WEB COPY



H.C.P.No.2483 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.2483 of 2022

Ramayi

W/o.Theerthan

.. Petitioner /
Mother of the detenu

Vs

1.State of Tamilnadu

Rep. By its Secretary to Government
Home, Prohibition and Excise Department,
Secretariat, Chennai – 600 009.

2.The District Collector and

District Magistrate
Kallkurichi District
Kallakurichi

3. The Superintendent of Police

O/o.Superintendent of Police
Kallakurichi District

4. The Superintendent of Prison

Central Prison
Cuddalore

Page Nos.1/8



H.C.P.No.2483 of 2022

5. State rep. by
The Inspector of Police
PEW Kallkurichi 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 entire records relating to the petitioner's son detention under Tamil Nadu Act 14 of 1982 vide detention order dated 18.11.2022 on the file of second respondent herein and made in proceedings D.O.No.C2/67/2022 and quash the same as illegal and consequently direct the respondents herein to produce the petitioner's son namely Karthi @ Xylo Karthi, son of Theerthan, aged about 24 years before this Court and set him at liberty.

For Petitioner	:	Mr.R.Sasikumar
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 18.11.2022 bearing reference D.O.No.C2/67/2022' [hereinafter 'impugned

Page Nos.2/8



H.C.P.No.2483 of 2022

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 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.303 of 2022 on the file of Kallakurichi Prohibition Enforcement Wing for alleged offences 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



H.C.P.No.2483 of 2022

not necessary to delve into the factual matrix or be detained further by facts.

WEB COPY

4.Mr.R.Sasikumar, 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.

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>29.11.2022</i>
<i>Representation received on</i>	..	<i>01.12.2022</i>
<i>File submitted on</i>	..	<i>20.12.2022</i>
<i>Under Secretary dealt with on</i>	..	<i>20.12.2022</i>
<i>Deputy Secretary dealt with on</i>	..	<i>20.12.2022</i>
<i>Minister dealt with and file received on..</i>		<i>22.12.2022</i>
<i>Rejected letter prepared on</i>	..	<i>22.12.2022</i>



WEB COPY



H.C.P.No.2483 of 2022

Rejection letter sent to the detenu on.. 23.12.2022

Govt. Holidays falls on:

03.12.2022, 04.12.2022, 10.12.2022, 11.12.2022, 17.12.2022, 18.12.2022

S.No.	Representation	Column 6 to 7	Column 9 to 10
1.	No. of days	19	1
2.	No. of holidays	6	-
	No. of delay days	13	1
Total 14 days delay			

7.We find that even if the intervening 6 public/Government holidays 03.12.2022, 04.12.2022, 10.12.2022, 11.12.2022, 17.12.2022 and 18.12.2022 are excluded, there is a delay of 14 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 14 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



H.C.P.No.2483 of 2022

every case.

WEB COPY

8.Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 18.11.2022 bearing reference D.O.No.C2/67/2022 made by the second respondent is set aside and the detenu Thiru.Karthi @ Xylo Karthi, aged 24 years, son of Thiru.Theerthan, 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

gpa

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



H.C.P.No.2483 of 2022

To

WEB COPY

1. Secretary to Government
Home, Prohibition and Excise Department,
Secretariat, Chennai – 600 009.
2. The District Collector and
District Magistrate
Kallkurichi District
Kallakurichi
3. The Superintendent of Police
O/o. Superintendent of Police
Kallakurichi District
4. The Superintendent of Prison
Central Prison
Cuddalore
5. The Inspector of Police
PEW Kallkurichi Police Station
Kallakurichi District
6. The Public Prosecutor,
High Court, Madras.



WEB COPY



H.C.P.No.2483 of 2022

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

gpa

H.C.P.No.2483 of 2022

17.04.2023

Page Nos.8/8