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H.C.P.No.2516 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.06.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

and

THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN

THILAKAVADI

H.C.P.No.2516 of 2022

Govindammal

W/o.Chinnadurai

.. Petitioner/Mother of Detenu

Vs.

1.State of Tamil Nadu,
Rep. by its Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai – 600 009.

2.The Commissioner of Police,
Avadi City.

3.The Inspector of Police,
T-16 Nazarathpet Police Station,
Chennai.

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

.. 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 call for the entire records relating to petitioner's son detention under Tamil Nadu Act 14 of 1982 vide detention order dated 03.11.2022 on the file of the second respondent herein made in proceedings No.144/BCDFGISSSV/2022 and quash the same as illegal and consequently direct the respondents herein to produce the petitioner's son namely Sivaraman, aged 41 years, S/o.Chinnadurai, before this Court and set him at liberty, now petitioner's son detained at Central Prison, Puzhal, Chennai – 600 066.

For Petitioner : Mr.C.C.Chellappan

For Respondents : Mr.R.Muniyapparaj
Additional Public Prosecutor
assisted by
Mr.M.Sylvester John, Advocate

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 03.11.2022 bearing reference 144/BCDFGISSSV/2022' [hereinafter 'impugned detention order' for the sake of convenience and brevity]. To be noted, third respondent is the sponsoring authority and second respondent is



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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 'Goonda' within the meaning of Section 2(f) of Act 14 of 1982.

3. There are five adverse cases and one ground case. The ground case which is the substratum of the impugned detention order is Crime No.272 of 2022 on the file of T-16 Nazarathpet Police Station for alleged offences under Sections 294(b), 336, 307, 419 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.



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4. Mr.C.C.Chellappan, learned counsel 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>24.11.2022</i>
<i>Representation received on</i>	..	<i>29.11.2022</i>
<i>File submitted on</i>	..	<i>13.12.2022</i>
<i>Under Secretary dealt with on</i>	..	<i>13.12.2022</i>
<i>Deputy Secretary dealt with on</i>	..	<i>13.12.2022</i>
<i>Minister dealt with on</i>	..	<i>19.12.2022</i>
<i>Rejected letter prepared on</i>	..	<i>19.12.2022</i>
<i>Rejection letter sent to the detenu on</i>	..	<i>19.12.2022</i>



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Government Holidays Falls on:

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and 18.12.2022'

7. We find that even if the intervening 06 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 12 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 12 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.

8. Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 03.11.2022 bearing reference 144/BCDFGISSSV/2022 made by the second respondent is set aside and the detenu Thiru.Sivaraman,



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aged 41 years, son of Thiru.Chinnadurai, now detained in Central Prison, Puzhal, Chennai is directed to be set at liberty forthwith unless required in connection with any other case/s. There shall be no order as to costs.

(M.S.,J.) (K.G.T.,J.)
05.06.2023

Index : Yes
Speaking order
Neutral Citation : Yes
rsi

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

To

- 1.The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai – 600 009.
- 2.The Commissioner of Police,
Avadi City.



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3.The Inspector of Police,
T-16 Nazarathpet Police Station,
Chennai.

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

5.The Public Prosecutor
High Court, Madras.



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

rsi

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