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H.C.P.No.2563 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.2563 of 2022

I.Deepalakshmi

.. Petitioner

VS

1.The State of Tamil Nadu rep. By
The Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George, Chennai – 9.

2.The District Magistrate and District Collector,
Namakkal District, Namakkal.

3.The Superintendent of Police,
Namakkal District, Namakkal.

4.The Inspector of Police,
Tiruchengode Town Police Station,
Tiruchengode, Namakkal District.

5.The Superintendent of Prison,
Central Prison, Salem.

.. 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 in connection with the order of detention passed by the second respondent in his proceedings C.M.P. No.39/Goonda/2022 (M1) dated 06.11.2022 against the petitioner's husband B.Induraj, aged 28 years, son of Balan, who is confined at Central Prison, Salem and set aside the



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same and direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner : Mr.M.Vengatesan
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 the detenu assailing a 'preventive detention order dated 06.11.2022 bearing reference C.M.P.No.39/Goonda/2022(M1)' [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 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 detenu is a 'Goonda' within the meaning of Section 2(f) of Act 14 of 1982.

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3. There is one adverse case. The ground case which is the sole substratum of the impugned detention order is Crime No.320 of 2022 on the file of Thiruchengode Rural Police Station for alleged offence under Section 392 of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] subsequently altered into one under Section 392 r/w 397 of IPC. 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.M.Vengatesan, 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>28.11.2022</i>
<i>Representation received on</i>	<i>..</i>	<i>08.12.2022</i>
<i>File submitted on dated</i>	<i>..</i>	<i>09.12.2022</i>
<i>Under Secretary dealt with on</i>	<i>..</i>	<i>09.12.2022</i>
<i>Deputy Secretary dealt with on</i>	<i>..</i>	<i>09.12.2022</i>
<i>Minister dealt with and file</i>		
<i>received on</i>	<i>..</i>	<i>19.12.2022</i>
<i>Rejection letter prepared on</i>	<i>..</i>	<i>19.12.2022</i>
<i>Rejection letter sent to the</i>		
<i>detenu on</i>	<i>..</i>	<i>20.12.2022</i>

Govt. Holidays:

10.12.2022, 11.12.2022, 17.12.2022 and 18.12.2022'

7. A careful perusal of the list of dates brings to light that there is five 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 make it clear that there cannot be any straight jacket formula with



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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 five 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 06.11.2022 bearing reference C.M.P.No.39/GOONDA/2022(M1) made by the second respondent is set aside and the detenu Thiru.Induraj, S/o.Thiru.Balan, aged about 28 years, 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 Central Prison, Salem.



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To

- 1.The Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George, Chennai – 9.
- 2.The District Magistrate and District Collector,
Namakkal District, Namakkal.
- 3.The Superintendent of Police,
Namakkal District, Namakkal.
- 4.The Inspector of Police,
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- 5.The Superintendent of Prison,
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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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