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H.C.P.No.2613 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.06.2023

CORAM

THE HONOURABLE MR.JUSTICE **M.SUNDAR**
and
THE HONOURABLE MR.JUSTICE **R.SAKTHIVEL**

H.C.P.No.2613 of 2022

Indhirani
W/o. Kumar

.. Petitioner /
mother of detenue

Vs

1. State of Tamil Nadu,
Rep. by the Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George, Chennai – 600 009.
2. The Commissioner of Police
Office of the Commissioner of Police
Avadi City, Chennai – 600 054
3. The Superintendent of Prison
Central Prison, Puzhal, Chennai – 600 066
4. The Inspector of Police
M-6, Manali Police Station
Chennai

.. Respondents

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Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus calling for the records relating to the detention order in Memo No.148/BCDFGISSSV/2022 dated 07.11.2022 passed by the 2nd respondent under the Tamil Nadu Act 14 of 1982 and set aside the same and direct the respondents to produce the petitioner's son Aridoss @ Ari, son of Kumar, aged 23 years, now confined in Central Prison, Puzhal, Chennai before this Court and set the petitioner's son at liberty.

For Petitioner	:	Mr.S.Senthilvel for Mr.K.Bommuraj
For Respondents	:	Mr.E.Raj Thilak Additional Public Prosecutor

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 detainee assailing a 'preventive detention order dated 07.11.2022 bearing reference No.148/BCDFGISSSV/2022 [hereinafter 'impugned preventive detention order' for the sake of convenience and brevity]. To be noted, fourth respondent is the sponsoring authority and



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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 detainee 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 constitutes substantial part of substratum of the impugned preventive detention order is Crime No.380 of 2022 on the file of M-6 Manali Police Station for alleged offences under Sections 341, 294(b), 336, 427, 392, 397 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.S.Senthilvel, learned counsel representing the counsel on record for petitioner and Mr.E.Raj Thilak, learned State Additional Public Prosecutor 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 preventive detention order and that one point turns on delay in considering a representation sent qua impugned preventive 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>09.12.2022</i>
<i>Representation received on</i>	..	<i>12.12.2022</i>
<i>File submitted on</i>	..	<i>20.12.2022</i>
<i>Under Secretary dealt with on</i>	..	<i>21.12.2022</i>
<i>Deputy Secretary dealt with on</i>	..	<i>21.12.2022</i>
<i>Minister dealt with on</i>	..	<i>22.12.2022</i>
<i>Rejected letter prepared on</i>	..	<i>22.12.2022</i>



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Rejection letter sent to the detenu on.. 22.12.2022

Govt. Holidays falls on:

17.12.2022, 18.12.2022

7. We find that even if the intervening 2 public/Government holidays are excluded, there is a delay of 5 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 5 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 07.11.2022 bearing reference No.148/BCDFGISSSV/2022 made by the second respondent is set aside and

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the detenu Mr.Aridoss @ Ari, male, aged 23 years, son of Mr.Kumar 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.)

(R.S.V.,J.)

19.06.2023

Index : Yes

Neutral Citation : Yes

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

To

1. The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
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2. The Commissioner of Police
Office of the Commissioner of Police
Avadi City, Chennai – 600 054
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5. The Public Prosecutor
Madras High Court, Chennai

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**M.SUNDAR, J.,
and
R.SAKTHIVEL, J.,**

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