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H.C.P.No.2636 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.06.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

and

THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN

THILAKAVADI

H.C.P.No.2636 of 2022

H.Uma

W/o.Harikrishnan

.. Petitioner/Mother of Detenu

Vs.

1.The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Fort St. George,
Chennai – 600 009.

2.The Commissioner of Police,
Greater Chennai,
Office of the Commissioner of Police,
Vepery, Chennai.

3.The Superintendent of Police,
Central Prison, Puzhal-II,
Chennai.

4.The Inspector of Police,
F-1 Chindatripet 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 to call for the records pertaining to the order of detention passed by the second respondent in his proceedings in No.426/BCDFGISSSV/2022, dated 16.11.2022 and quash the same as illegal and produce the detenu, namely Sathishkumar @ Sathish Sha, S/o.Harikrishnan, aged 24 years as Goonda, now he is confined in Central Prison, Puzhal-II, Chennai before this Court and set him at liberty.

For Petitioner : Mr.S.Jijendran

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 16.11.2022 bearing reference 426/BCDFGISSSV/2022' [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.



H.C.P.No.2636 of 2022

WEB COPY

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 two adverse cases and one ground case. The ground case which constitutes substantial part of substratum of the impugned detention order is Crime No.278 of 2022 on the file of F-1 Chindatripet Police Station for alleged offences under Sections 341, 294(b), 324, 307, 336 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.



H.C.P.No.2636 of 2022

WEB COPY

4. Mr.S.Jijendran, 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>14.12.2022</i>
<i>Representation received on</i>	..	<i>21.12.2022</i>
<i>File submitted on</i>	..	<i>26.12.2022</i>
<i>Under Secretary dealt with on</i>	..	-
<i>Deputy Secretary dealt with on</i>	..	<i>26.12.2022</i>
<i>Minister dealt with on</i>	..	<i>30.12.2022</i>
<i>Rejected letter prepared on</i>	..	<i>30.12.2022</i>
<i>Rejection letter sent to the detenu on</i>	..	<i>02.01.2023</i>



H.C.P.No.2636 of 2022

WEB COPY

Government Holidays Falls on:

24.12.2022, 25.12.2022, 31.12.2022 and 01.01.2023'

7. We find that even if the intervening 02 public/Government holidays 24.12.2022 and 25.12.2022 are excluded, there is a delay of 05 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 16.11.2022 bearing reference 426/BCDFGISSSV/2022 made by the second respondent is set aside and the detenu Thiru.Sathishkumar @ Sathish Sha, aged 24 years, son of



H.C.P.No.2636 of 2022

Thiru.Harikrishnan, now detained in Central Prison, Puzhal-II, 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.)
12.06.2023

Index : Yes
Speaking order
Neutral Citation : Yes
rsi

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



H.C.P.No.2636 of 2022

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- To
- 1.The Secretary to Government,
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 - 2.The Commissioner of Police,
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Office of the Commissioner of Police,
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 - 3.The Superintendent of Police,
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 - 4.The Inspector of Police,
F-1 Chindatripet Police Station,
Chennai.
 - 5.The Public Prosecutor
High Court, Madras.



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

rsi

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