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H.C.P.No.2706 of 2022

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.03.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and
THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

H.C.P.No.2706 of 2022

Rani
W/o.Late Panneerselvam

.. Petitioner/mother of detenu

Vs

1. The Secretary to Government,
Home, Prohibition & Excise Dept.,
Fort St. George,
Chennai – 600 009.
2. The Commissioner of Police,
Avadi City,
Avadi, Chennai – 600 054.
3. The Superintendent of Central Prison,
Central Prison, Puzhal,
Chennai – 600 066.
4. The Inspector of Police,
M-7, Manali New Town Police Station,
Chennai – 600 103.

.. 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 in connection with the detention order passed by the 2nd respondent in No.47/BCDFGISSSV/2022 dated 31.05.2022 against petitioner's son, the detenu herein, now confined in Central Prison for Men, Puzhal, Chennai and set aside the same and direct the respondents to produce the detenu Thiru.Arunselvam, S/o.Late Panneerselvam, aged 22 years, before this Court and set him at liberty.

For Petitioner	:	Mr.A.Nirmal Kumar
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 31.05.2022 bearing reference 47/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.

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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 is no adverse case. The ground case which is the sole substratum of the impugned detention order is Crime No.119 of 2022 on the file of M-7 Manali New Town Police Station for alleged offences under Sections 341, 294(b), 307 and 506(ii) of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] and subsequently altered into Section 302 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.



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4. Mr.A.Nirmal Kumar, 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>21.12.2022</i>
<i>Representation received date</i>	..	<i>22.12.2022</i>
<i>File submitted on</i>	..	<i>30.12.2022</i>
<i>Under Secretary dealt with on</i>	..	<i>30.12.2022</i>
<i>Deputy Secretary dealt with on</i>	..	<i>30.12.2022</i>
<i>Minister dealt with on</i>	..	<i>04.01.2023</i>
<i>Rejection letter prepared on</i>	..	<i>04.01.2023</i>
<i>Rejection letter sent to the detenu on</i>	..	<i>04.01.2023</i>



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Government Holidays Falls on:

24.12.2022, 25.12.2022, 31.12.2022 and 01.01.2023'

<i>S.No.</i>	<i>Representation</i>	<i>Column 6 to 7</i>	<i>Column 9 to 10</i>
1.	No. of days	07	04
2.	No. of holidays	02	02
	No. of delay days	05	02
Total 7 days delay			

7. We find that even if the intervening 04 public/Government holidays 24.12.2022, 25.12.2022, 31.12.2022 and 01.01.2023 are excluded, there is a delay of 7 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 7 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.



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8. Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 31.05.2022 bearing reference 47/BCDFGISSSV/2022 made by the second respondent is set aside and the detenu Thiru.Arunselvam, aged 22 years, son of Thiru.Panneerselvam, 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.)
27.03.2023

Index : Yes / No
Speaking / non-speaking
Neutral Citation : Yes / No
rsi

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



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To

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1. The Secretary to Government,
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2. The Commissioner of Police,
Avadi City,
Avadi, Chennai – 600 054.
3. The Superintendent of Central Prison,
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M-7, Manali New Town Police Station,
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5. The Public Prosecutor,
High Court, Madras.



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

rsi

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