



H.C.P(MD)Nos.796 & 914 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 18.12.2023

Coram

THE HON'BLE MR.JUSTICE **M.SUNDAR**
and
THE HON'BLE MR. JUSTICE **R.SAKTHIVEL**

H.C.P(MD)Nos.796 & 914 of 2023

H.C.P(MD)No.796 of 2023

Karpagavalli

.. Petitioner/Wife of detenu

VS

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

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

3.The Superintendent of Prison,
Central Prison,
Palayamkottai,
Tirunelveli District.

.. Respondents

Prayer:- Petition filed under Article 226 of the Constitution of India
praying for issuance of a writ of Habeas Corpus calling for the records



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pertaining to the impugned detention order in M.H.S.Confdl No. 32/2023 dated 27.04.2023 passed by the second respondent is illegal and set aside the same by setting the detenu by name Rajkumar @ Kumar, S/o.Kothalam, aged 46 years and set him at liberty now detained at Central Prison, Palayamkottai, Tirunelveli District.

For Petitioner : Mr.S.Vikram

For Respondents : Mr.A.Thiruvadi Kumar
Additional Public Prosecutor

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Gopinath .. Petitioner/brother of detenu

VS

1.The State represented by,
The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai – 9.

2.The District Collector cum District Magistrate,
Tenkasi District,
Tenkasi.

3.The Superintendent of Police,
Central Prison,
Palayamkottai,
Tirunelveli District.

4.The Inspector of Police,
Puliyangudi Police Station,
Tenkasi District.

.. Respondents



H.C.P(MD)Nos.796 & 914 of 2023

Prayer:- Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Habeas Corpus calling for the records in M.H.S.Confdl No.33/2023 dated 27.04.2023 passed by the second respondent and set aside the same and direct the respondents herein to produce the detenu Kannan, aged 43 years, S/o.Sappani, who has been termed as 'Drug Offender', now confined in Central Prison, Palayamkottai before this Court and set the detenu at liberty.

For Petitioner : Mr.M.Pandian

For Respondents : Mr.A.Thiruvadi Kumar
Additional Public Prosecutor

COMMON ORDER

[Common Order of the Court was made by M.SUNDAR, J.]

This common order will now govern captioned two 'Habeas Corpus Petitions' [hereinafter 'HCPs' in plural and 'HCP' in singular for the sake of brevity, convenience and clarity].

2.H.C.P(MD)No.796 of 2023 shall be referred to as 'I HCP' and H.C.P(MD)No.914 of 2023 shall be referred to as 'II HCP' for the sake of convenience and clarity.



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3.I HCP was listed in the admission board on 06.07.2023 and II HCP was listed in the admission board on 25.07.2023. The following orders were made in the admission board by Hon'ble Coordinate Predecessor Bench:

I HCP:

HCP(MD) No. 796 of 2023

M.S.RAMESH, J
and
M.NIRMAL KUMAR, J.

Admit.

Mr. A. Thiruvorodi Kumar,
learned Additional Public Prosecutor, takes
notice for the respondents. He seeks time to
file counter affidavit.

Post after 8/12 weeks.

[M.S.R.,J] [M.N.K.,J]
06.07.2023

LM



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II HCP:

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H.C.P.(MD) No....914... of 2023

M.S.RAMESH, J.
and
M.NIRMAL KUMAR, J.

Admit.

Mr. A. Thiruvadi kumar
learned Additional Public Prosecutor,
takes notice for the respondents. He
seeks time to file counter affidavit.

Post after 5 weeks.

[M.S.R., J.] & [M.N.K, J.]
25.07.2023

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4.It has now become necessary to set out factual matrix in a nutshell.

5.Short facts are that two preventive detention orders both dated 27.04.2023 one bearing reference M.H.S.Confdl No.32/2023 and another bearing M.H.S.Confdl No.33/2023 made by the jurisdictional District Collector [second respondent in both HCPs], who shall be referred to as 'detaining authority', was made as against two individuals



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namely Thiru.Rajkumar alias Kumar, aged 46 years, Son of Kothalam and Thiru.Kannan, aged 43 years, Son of Sappani branding them as a 'Drug Offender' within the meaning of Section 2(e) of '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 brevity, convenience and clarity]. To be noted, these two preventive detention orders shall be collectively referred to as 'impugned preventive detention orders' for the sake of convenience and clarity. As regards preventive detention order qua Thiru.Rajkumar alias Kumar, the same shall be referred to as 'I impugned preventive detention order' and as regards preventive detention order qua Thiru.Kannan, the same shall be referred to as 'II impugned preventive detention order' wherever necessary for the sake of convenience and clarity. I impugned preventive detention order has been assailed in I HCP by wife of the detenu and II impugned preventive detention order has been assailed in II HCP by brother of the detenu. In other aspects, facts are common.



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6.Impugned preventive detention orders are predicated on one solitary case and that one solitary case is Crime No.113 of 2023 for an alleged occurrence on 07.04.2023 at 08.30 hours. Suffice to say that this solitary case pertains to alleged offences under Section 8(c) read with 20(b)(ii)(B) of '*The Narcotic Drugs and Psychotropic Substances Act, 1985*' [hereinafter '*NDPS Act*' for the sake of convenience and clarity]. To be noted, three kilos of Ganja is the substance which is said to have been seized.

7.In the captioned HCPs though very many grounds have been raised in the support affidavits, Mr.S.Vikram, learned counsel for I HCP petitioner and Mr.M.Pandian, learned counsel for II HCP petitioner in the final hearing board today, predicated their campaign against impugned preventive detention orders on the point that there is delay in considering the representations made qua detenues. As regards I HCP, a representation dated 06.05.2023 has been made and as regards II HCP, a representation dated 18.07.2023 has been made. Adverting to the delay in considering the representations, both learned counsel submitted that the same is fatal and the same has vitiated impugned preventive detention orders.



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8.In response to the delay point arguments of learned

WEB COUNSEL for HCP petitioners, learned Prosecutor placed before us two tabulations.

9.As regards I HCP, tabulation is as follows:

Rep
not done

H.P.&E/IV/Dapt

Column-II
REPRESENTATION

1	Category (Gender/Drag Offender/Sexual Offender etc)	Drug Offender
2	Name	THIRU KAJKUMAR S K
3	Detention Order No & Date	32/2023, dated 27.04.2023
4	District / City	Tamil Nadu
5	Representation dated	06.05.2023
6	Representation received on	09.05.2023
(A)	If the representations are received in other languages files sent for translation or	--
	File received on	--
(B)	If any clarification/details are required on representations Remarks called for from the Detaining Authority on	--
	Remarks received on	--
7	File submitted on by ASO/SD	10.05.2023
8	Under Secretary dealt with on	10.05.2023
9	Deputy Secretary / Joint Secretary / Additional Secretary dealt with on	10.05.2023
9A	Approval Date of Secretary/Principal Secretary/Additional Chief Secretary	
10	Minister dealt with on	11.05.2023
11	Rejection letter prepared on	12.05.2023
12	Rejection letter served on the detainee (by the prison)	17.05.2023

Government Holidays: 18.05.2023, 14.05.2023

Sl No	Remarks	Column 6 to 9A	Column 10 to 12
1.	No. of days	-	5
2.	No. of Holidays	-	2
3.	No. of delay days	-	3
	Total		3 days delay

Section Officer
J.S.



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10.As regards II HCP, tabulation is as follows:

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(2)
Dep 9/10/23

ILP&E(XIV)Dept

Column-II
REPRESENTATION

1.	Category (Gooner/Drug Offender/Sexual Offender etc)	Drug Offender
2.	Name	Thiru. Kannan
3.	Detention Order No & Date	33/2023, dated 27.04.2023
4.	District / City	Tenkasi District
5.	Representation dated	15.07.2023
E.	Representation received on	20.07.2023
(A)	If the representations are received in other languages Files sent for translation on	---
	Files received on	---
(B)	If any clarification/details are required on representations	---
	Remarks called for from the Detaining Authority on	---
	Remarks received on	---
7.	File submitted on by ASD/GO	21.07.2023
8.	Under Secretary dealt with on	---
9.	Deputy Secretary / Joint Secretary / Additional Secretary dealt with on	21.07.2023
EA	Approval Date of Secretary/Principal Secretary/Additional Chief Secretary	---
10.	Minister dealt with on	24.07.2023
11.	Rejection letter prepared on	26.07.2023
12.	Rejection letter served to the detenu (by the prison)	31.07.2023

Government Holidays: 26.07.2023, 30.07.2023

Sl.No.	Representation	Counting to SA	Column 10 to 12
1.	No. of days		6
2.	No. of Holidays		2
3.	No. of delay days		4
	Total		4 days delay

Section Officer

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11.Learned Prosecutor submitted that in I HCP, delay is only

three days and in II HCP, delay is only four days.

12.We have carefully considered the trajectory the representations have taken and the delay point.

13.We examined the delay point on the basis of ***Rajammal's*** principle ie., principle laid down by Hon'ble Supreme Court in ***Rajammal Vs. State of Tamil Nadu and others*** reported in (1999) 1 SCC 417. ***Rajammal's*** case is a celebrated Judgment as regards delay point and the principle is that duration or range of delay is not the sole determinant and it is the explanation for delay which is the clinching determinant. In the case on hand, we examined the explanation. Before we deal with that aspect, we deem it appropriate to say that delay has occurred as between the date on which the rejection letters were prepared and the date on which it was actually served on the detenues. This delay clearly remains unexplained. This delay or this leap in the timeline will be evident from serial Nos.11 and 12 in both aforementioned tabulations. As the delay of three and four days in I and



II HCPs respectively remains unexplained, we apply **Rajammal's** principle. To be noted, in **Rajammal's** case, delay from 09.02.1998 to 14.02.1998 was considered unexplained but that was at the stage of consideration by Hon'ble Minister but in the case on hand, it is post rejection order and the delay has occurred in serving the rejection order on the detenues. Therefore captioned HCPs are in a much better footing qua **Rajammal's** case. This would mean that **Rajammal's** principle would apply in all force to the case on hand.

14.Before we conclude, we make it clear that delay point will have to be examined on a case to case basis and therefore, this will not serve as a across the board case law for delay. We remind ourselves of **Rajammal's** principle that it is not number of days of delay but the clincher is the explanation for delay.

15.In the case on hand, we have applied **Rajammal's** principle *inter alia* considering that it is a solitary case and that charge-sheet has been filed within time in the trial Court.



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16.Learned Prosecutor submits on instructions that charge-sheet was filed on 05.08.2023 vide C.C.No.835 of 2023 on the file of Essential Commodities Court, Madurai.

17.If detenues apply for regular bail in the trial Court, we make it clear that the trial Court shall consider the bail applications on its own merits and in accordance with law applying the regular determinants for grant or refusal of bail untrammelled by this common order vide which we have interfered with impugned preventive detention orders. This is owing to the fact that the instant order has been made for the purpose of testing impugned preventive detention orders in the habeas legal drill on the technical points available.

18.Ergo, the sequitur is, captioned I HCP is allowed. Impugned preventive detention order dated 27.04.2023 bearing reference M.H.S.Confdl No.32/2023 made by second respondent is set aside and the detenu Thiru.Rajkumar alias Kumar, aged 46 years, son of Thiru.Kothalam, is directed to be set at liberty forthwith, if not required in connection with any other case / cases.



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19.Apropos, the sequitur is, captioned II HCP is allowed.

Impugned preventive detention order dated 27.04.2023 bearing reference M.H.S.Confdl No.33/2023 made by second respondent is set aside and the detenu Thiru.Kannan, aged 43 years, son of Thiru.Sappani, 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.)
18.12.2023

Index : Yes/No

Neutral Citation : Yes/No

ps

Post Script: (i) Registry to forthwith communicate this order to Jail authorities in Central Prison, Palayamkottai.

(ii) All concerned to act on this order being uploaded in official website of this Court without insisting on certified copies. To be noted, this order when uploaded in official website of this Court will be watermarked and will also have a QR code.



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WEB COPY To

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Home, Prohibition and Excise Department,
Secretariat,
Fort St. George,
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- 2.The District Collector and District Magistrate,
Tenkasi District,
Tenkasi.
- 3.The Superintendent of Prison,
Central Prison,
Palayamkottai,
Tirunelveli District.
- 4.The Inspector of Police,
Puliyangudi Police Station,
Tenkasi District.
- 5.The Joint Secretary to Government,
Public (Law and Order) Department,
Secretariat,
Chennai.
- 6.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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

ps

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