



WEB COPY



HCP.No.55 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.04.2024

CORAM :

THE HONOURABLE MR. JUSTICE M.S. RAMESH
AND
THE HONOURABLE MR. JUSTICE SUNDER MOHAN

H.C.P.No.55 of 2024

Ibrahim

... Petitioner

Vs.

The State rep. by its

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

2.The Commissioner of Police,
Greater Chennai,
Office of the Commissioner of Police,
Vepery, Chennai – 600 007.

3.The Superintendent of Prison,
Special Prison for Women, Puzhal,
Chennai – 600 066.

4.The Inspector of Police,
K-10 Koyambedu Police Station,
Koyambedu, Chennai.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to



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issue a Writ of Habeas Corpus, calling for the records pertaining to the order of detention dated 01.12.2023 passed by the 2nd respondent in No.642/BCDFGISSSV/2023 and quash the same and produce the detainee Shahin, aged about 40 years, W/o.Siddiq Ali, before this Court and set her at liberty and the detainee now confined in Special Prison for Women, Puzhal, Chennai.

For Petitioner : Ms.D.Maria Johnson

For Respondents : Mr.E.Raj Thilak,
Additional Public Prosecutor
assisted by Mr.C. Aravind

ORDER

M.S.RAMESH, J.
AND
SUNDER MOHAN, J.

The petitioner herein who is the son of the detainee namely Shahin, aged about 40 years, W/o.Siddiq Ali, has come forward with this petition challenging the detention order passed by the second respondent dated 01.12.2023 slapped on his mother, branding her as "Goonda" 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 14 of 1982].



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2. We have heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the respondents. We have also perused the records produced by the Detaining Authority.

3. Though several grounds are raised in the petition, the learned counsel for the petitioner focused mainly on the ground that there is an unexplained delay in serving the grounds of detention. According to the learned counsel for the petitioner, though the detention order was passed on 01.12.2023, the grounds of detention was served on the detainee only on 06.12.2023, which is in violation of mandatory provision under Section 8(1) of the Tamil Nadu Act 14 of 1982.

4. In the instant case, though the detainee was detained on 01.12.2023 through the detention order, the grounds of the detention was served only on 06.12.2023, which is on the sixth day. Under Section 8 (1) of the Tamil Nadu Act 14 of 1982, the Detaining Authority is mandated to communicate the grounds of detention within a period of five (5) days. The computation of the period of five days was considered by the Coordinate



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Bench of this Court in the case of '**Vasanthi vs. The Secretary to Government and others**', passed in H.C.P.Nos.1407 and 1410 of 2023, dated 29.08.2023, wherein reliance was placed on the decision of the Hon'ble Supreme Court in the case of '**Enforcement Directorate, Government of India vs. Kapil Wadhawan and another**', reported in '**2023 SCC OnLine SC 972**', and held as follows:

“9.3

.....*It was a reference before the Hon'ble Larger Bench, however, as that is also a matter of curtailment of liberty (as in the case on hand), we draw inspiration from Kapil Wadhawan principle and hold that while computing five days within the meaning of Section 8(1) of Act 14 of 1982, the date on which the preventive detention order is served on the detenu i.e., formal arrest pursuant to the preventive detention order should also be included.*”

5. Thus, when the order of detention is taken into consideration for the purpose of computing five days period, the Detaining Authority has served it on the sixth day, which is opposite to the ratio laid down by the Hon'ble Supreme Court as followed by the Coordinate Bench of this Court in **Vasanthi's case**.



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6. In view of the violation of the mandatory provision under Section 8 (1) of the Tamil Nadu Act 14 of 1982, the order of detention cannot be legally sustained.

7. Accordingly, the detention order passed by the second respondent on 01.12.2023 in No.642/BCDFGISSSV/2023, is hereby set aside and the Habeas Corpus Petition is allowed. The detainee viz., Shahin, aged about 40 years, W/o.Siddiq Ali, is directed to be set at liberty forthwith, unless her confinement is required in connection with any other case.

[M.S.R., J]

[S.M., J]

02.04.2024

Index: Yes/No

Internet: Yes/No

Neutral Citation: Yes/No

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M.S.RAMESH, J.
and
SUNDER MOHAN, J.

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To

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

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