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HCP.No.132 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.04.2024

CORAM :

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

H.C.P.No.132 of 2024

Thameema Begum

... Petitioner

Vs.

1.State of Tamil Nadu  
Rep. By The Principal Secretary to Government  
Home, Prohibition and Excise Department  
Fort St.George  
Chennai 600 009

2.The Commissioner of Police  
Tambaram City  
Office of the Commissioner of Police  
Sholinganallur, Chennai 600 119

3.The Superintendent of Police  
Central Prison  
Puzhal, Chennai - 66

4.The Inspector of Police,  
PEW - Pallikarania Police Station  
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 relating to the detention order in Memo BCDFGISSSV/No.61/2023 dated 21.12.2023 passed by the 2nd respondent under the Tamilnadu Act 14 of 1982 and set aside the same and direct the respondents to produce the petitioner's husband A.Mohammed Mustafa @ Haraba S/o.Ayub Khan the detenu. Now confined in Central Prison, Puzhal, Chennai before this Court and set the petitioner's husband A.Mohammed Mustafa @ Haraba S/o.Ayub Khan aged about 29 years the detenu herein at liberty.

For Petitioner : Mr.P.N.Veeramani  
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 wife of the detenu namely A.Mohammed Mustafa @ Haraba, aged about 29 years, S/o.Ayub Khan, has come forward with this petition challenging the detention order passed by the second respondent dated 21.12.2023 slapped on his mother, branding her as "Goonda" under the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Cyber Law Offenders, Drug Offenders, Forest



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Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Sexual Offenders, Slum Grabbers and Video Pirates Act, 1982 [Tamil Nadu Act 14 of 1982].

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 21.12.2023, the grounds of detention was served on the detenu only on 26.12.2023, 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 detenu was detained on 21.12.2023 through the detention order, the grounds of the detention was served only



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on 26.12.2023, 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 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



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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*.

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 21.12.2023 in BCDFGISSSV No.61/2023, is hereby set aside and the Habeas Corpus Petition is allowed. The detainee viz., A.Mohammed Mustafa @ Haraba, aged about 29 years, S/o.Ayub Khan, 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]

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Index: Yes/No

Neutral Citation: Yes/No

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

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To

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