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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.06.2024

CORAM :

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

H.C.P.No.299 of 2024

Chitra ... Petitioner

Vs.

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

2.The Commissioner of Police,
Greater Chennai.

3.The Superintendent,
Central Prison, Puzhal.

4.The Inspector of Police, (Law & Order)
R2 Kodambakkam Police Station,
Chennai. ... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus, directing the respondents to produce the body of the detenu namely Raji @ Kulla Raji, aged about 32 years, S/o.Mohan, who is detained in Central Prison, Puzhal, Chennai, before this Court and pass order to call for the records of detention order dated passed

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by the second respondent in BCDFGISSSV No.19/2024 dated 08.01.2024 against the petitioner's son Raji @ Kulla Raji, S/o.Mohan and set aside the same and set the detenu at liberty.

For Petitioner : Mr.C.Jagan

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 mother of the detenue Raji @ Kulla Raji, aged about 32 years, S/o.Mohan, has come forward with this petition challenging the detention order passed by the second respondent dated 08.01.2024 slapped on her son, branding him as "Drug Offender" 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].

2. Heard the learned counsel for the petitioner, as well as the learned Additional Public Prosecutor appearing for the respondents.

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3. Though several grounds are raised in the petition, the learned counsel for the petitioner submitted that there is an inordinate delay in passing the order of detention.

4. In the instant case, the detenu was arrested on 18.11.2023 and thereafter, the detention order came to be passed on 08.01.2024. This fact is not disputed by the learned Additional Public Prosecutor.

5. In the case of ***'Sushanta Kumar Banik Vs. State of Tripura'***, reported in ***'2022 LiveLaw (SC) 813'***, when there was an inordinate delay from the date of proposal till passing of the detention order and likewise, between the date of detention order and the actual arrest, the Hon'ble Supreme Court had held that the live and proximate link, between the grounds and the purpose of detention, stands snapped in arresting the detenu. The relevant observation of the Hon'ble Supreme Court is extracted hereunder:-

> ***"****20. It is manifestly clear from a conspectus of the above decisions of this Court, that the underlying principle is that if there is unreasonable delay between*

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the date of the order of detention & actual arrest of the detenu and in the same manner from the date of the proposal and passing of the order of detention, such delay unless satisfactorily explained throws a considerable doubt on the genuineness of the requisite subjective satisfaction of the detaining authority in passing the detention order and consequently render the detention order bad and invalid because the "live and proximate link" between the grounds of detention and the purpose of detention is snapped in arresting the detenu. A question whether the delay is unreasonable and stands unexplained depends on the facts and circumstances of each case."

6. Drawing inspiration from the judgment in ***Sushanta Kumar Banik's case***, a co-ordinate Bench of this Court in the case of ***'Gomathi Vs. Principal Secretary to Government and Others',*** reported in ***'2023 SCC OnLine Mad 6332'***, had held that when there is an inordinate delay from the date of arrest/date of proposal till the order of detention, the live and proximate link between them would also stand snapped and thereby, had quashed the detention order on this ground.

7. In yet another case i.e., in ***'Nagaraj Vs. State of Tamil Nadu'***, reported in ***'*(2018) 3 MWN (Cri) 428'**, this Court had held that the delay

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of 36 days in passing the detention order after the arrest of the detenu would snap the live and proximate link between the grounds and purpose of detention. Hence, in view of the unexplained and inordinate delay in passing the order of detention, after the arrest of the detenu, the detention order in the present case, is liable to be quashed.

8. Accordingly, the detention order passed by the second respondent on 08.01.2024 in BCDFGISSSV No.19/2024, is hereby set aside and the Habeas Corpus Petition is allowed. The detenue viz., Raji @ Kulla Raji, aged about 32 years, S/o.Mohan, is directed to be set at liberty forthwith, unless his confinement is required in connection with any other case.

[M.S.R., J] [S.M., J]

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Index: Yes/No
Speaking/Non-speaking order
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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