



WEB COPY



HCP.No.460 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.08.2024

CORAM :

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM
AND
THE HONOURABLE MR. JUSTICE R.SAKTHIVEL

H.C.P.No.460 of 2024

Eswari

... Petitioner

Vs.

1. The Principal Secretary to Government, Home,
Prohibition and Excise Department,
Fort St.George,
Chennai – 600 009.
2. The District Magistrate and District Collector,
Erode District,
Erode.
3. The Superintendent of Police,
Erode District.
4. The Superintendent, Central Prison,
Coimbatore.
5. The Inspector of Police,
Erode Taluk Police Station,
Erode District.

... 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 passed by the second respondent pertaining to the order made in Cr.M.P.NO. 04/GOONDA/2024 C1 dated 11.02.2024 in detain the detainee under 2(f) of Tamil Nadu Act 14 of 1982, as a GOONDA and quash the same and direct the respondent to produce the detainee GANESHAN, Son of Ponnaiya aged about 57 years, who is detained at Central Prison, Coimbatore before this Court and set him at liberty.

For Petitioner : Mr.G.Nirmal Krishnan

For Respondents : Mr.E.Raj Thilak,
Additional Public Prosecutor

ORDER

(Order of the Court was made by *S.M.SUBRAMANIAM, J.*)

The order of detention dated 11.02.2024, issued by the learned District Magistrate/District Collector, Erode District is sought to be assailed in the present habeas corpus petition.

2. The petitioner, herein is the sister of the detainee.

3. Mr.G.Nirmal Krishnan, the learned Counsel appearing on



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behalf of the petitioner would submit that the detenue was arrested by the Police in connection with other cases on 28.11.2023. However, the detention order under Act 14 of 1982 was made on 11.02.2024, after a lapse of about 75 days. It is mainly contended that long delay of 75 days has not been explained by the respondents. Such unexplained delay in invoking the provisions of Act 14 of 1982 is fatal. Therefore, the habeas corpus petition is to be considered.

4. Mr.E.Raj Thilak, the learned Additional Public Prosecutor would oppose by stating that 74 criminal cases are pending against the detenue and most of the cases are registered under Section 380 of IPC. He is a habitual offender and assessing the character, antecedent and nature of offences, the Executive Magistrate invoked Act 14 of 1982 and there is no infirmity.

5. However, the respondents are unable to explain the enormous delay of 75 days in invoking the provisions of Act 14 of 1982.

6. Preventive detention is not punitive in nature. Therefore, the



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Authorities competent while invoking the powers conferred under Act 14 of 1982 is expected to keep in mind that they are infringing the fundamental right of a citizen and the procedures as contemplated under the Act are to be scrupulously followed. The procedures contemplated are to be followed *stricto sensu* and violation would result in invalidation of the detention order passed by the competent Authority.

7. The preventive detention is made in anticipation of crimes. Thus, in the absence of strong and compelling reasons, the power under Act 14 of 1982 need not be exercised. In other words, it cannot be a routine affair and application of mind on the part of the detaining Authority is mandatory and in absence, the order is liable to be set aside.

8. In the present case, long delay would provide scope for drawing an inference that the Authority has invoked Act 14 of 1982, which is an after thought. The imminent circumstances warranting invocation of Act 14 of 1982 is to be established by the competent Authority. In the present case, such an element is missing. Thus, we are inclined to interfere. Accordingly,



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the impugned order of detention in proceedings Cr.M.P.No.04/Goonda/2024

C1 dated 11.02.2024 is quashed and the Habeas Corpus Petition stands
allowed.

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

05.08.2024

Index : Yes/No
Speaking Order : Yes/No
Neutral Citation : Yes/No

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