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HCP.No.473 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.04.2024

CORAM :

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

H.C.P.No.473 of 2024

S.Jaya

... Petitioner / wife of the detenue

Vs.

1.Joint Secretary (COFEPOSA)
Government of India,
Ministry of Finance,
Department of Revenue,
Central Economic Intelligence Bureau (CEIB)
6th Floor, 'B' Wing, Janpath Bhawan
Janpath, New Delhi-110 001.

2.Union of India rep by
Director General, Central Economic,
Intelligence Bureau, Government of India,
Ministry of Finance, Department of Revenue,
6th Floor, B Wing Janpath Bhawan,
Janpath, New Delhi-110 001.

3.Commissioner of Customs,
Chennai-III, Customs House,
Chennai-600 001

4.Superintendent,
Central Prison-II,
Puzhal, Chennai-600 066

... Respondents



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PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus, to call for the records relating to the detention order in F No.PD-12001/11/2023-COFEPOSA dated 20.12.2023 passed by the first respondent, quashing the same and directing the respondents to produce the body of the detenue S.Santhoshkumar, S/o.Subramaniam, now detained at Central Prison, II Puzhal, Chennai as COFEPOSA detenue, before this Court and set him at liberty.

For Petitioner : Mr.R.Rajarathinam
Senior Counsel
for Mr.S.Ramachandran

For Respondents : Mr.V.Udaya Kumar
for R1 and R2
Mr.H.Siddarth for R3

Mr.E.Raj Thilak
Additional Public Prosecutor
for R4

ORDER

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

The petitioner herein who is the wife of the detenu viz., S.Santhoshkumar, S/o.Subramaniam, detained at Central Prison, II Puzhal, Chennai, has come forward with this petition challenging the



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detention order passed by the first respondent dated 20.12.2023 slapped on her husband, in exercise of the powers conferred under Section 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974.

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

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 13.10.2023 and thereafter, the detention order came to be passed on 20.12.2023. 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



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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 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***



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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 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. This apart, as seen from the booklet, in the confession statement of the detenu, he has stated that his education qualification is 4th standard and that he knows only Tamil. However, the order of detention and the



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grounds of detention supplied to the detenu are only in English, thereby depriving the detenu of making an effective representation to the authorities against the order of detention.

9. In this context, it is useful to refer to the judgment of the Hon'ble Supreme Court in the case of '*Powanammal Vs. State of Tamil Nadu*' reported in '*(1999) 2 SCC 413*'. The Hon'ble Supreme Court, after discussing the safeguards embodied in Article 22[5] of the Constitution, observed that the detenu should be afforded an opportunity of making representation effectively against the Detention Order and that, the failure to supply every material in the language which can be understood by the detenu, is imperative. In the said context, the Hon'ble Supreme Court has held in Paragraphs 9 and 16 {as in SCC journal} as follows:

“9.However, this Court has maintained a distinction between a document which has been relied upon by the detaining authority in the grounds of detention and a document which finds a mere reference in the grounds of detention. Whereas the non-supply of a copy of the document relied upon in the grounds of detention has been held to be fatal to continued detention, the detenu need not show that any prejudice is caused to him. This is because the non-supply of



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such a document would amount to denial of the right of being communicated the grounds and of being afforded the opportunity of making an effective representation against the order. But it would not be so where the document merely finds a reference in the order of detention or among the grounds thereof. In such a case, the detenu's complaint of non-supply of document has to be supported by prejudice caused to him in making an effective representation. What applies to a document would equally apply to furnishing a translated copy of the document in the language known to and understood by the detenu, should the document be in a different language.

..... **16.***For the above reasons, in our view, the non-supply of the Tamil version of the English document, on the facts and in the circumstances, renders her continued detention illegal. We, therefore, direct that the detenue be set free forthwith unless she is required to be detained in any other case. The appeal is accordingly allowed.”*

10. In view of the ratio laid down by the Hon'ble Supreme Court and in view of the aforesaid ground, this Court is of the view that the detention order is liable to be quashed on this ground also.

11. Accordingly, the detention order passed by the second respondent on 20.12.2023 in F No.PD-12001/11/2023-COFEPOSA, is



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hereby set aside and the Habeas Corpus Petition is allowed. The detenu viz., S.Santhoshkumar, S/o.Subramaniam, detained at Central Prison, Il Puzhal, Chennai, 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]

29.04.2024

Index: Yes/No

Internet: Yes/No

Neutral Citation: Yes/No

Anu

To

1.Joint Secretary (COFEPOSA)
Government of India,
Ministry of Finance,
Department of Revenue,
Central Economic Intelligence Bureau (CEIB)
6th Floor, 'B' Wing, Janpath Bhawan
Janpath, New Delhi-110 001.

2.Director General, Central Economic,
Intelligence Bureau, Government of India,
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3.Commissioner of Customs,
Chennai-III, Customs House,
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4. Superintendent,
Central Prison-II,
Puzhal, Chennai-600 066

5. The Joint Secretary,
Law and Order Department,
Secretariat, Chennai

6. The Public Prosecutor,
High Court, Madras.



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