



HCP.No.820 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.06.2024

CORAM :

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

H.C.P.No.820 of 2024

S.Priya

... Petitioner

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.The Commissioner of Customs,
Chennai – III, Customs House,
Chennai – 600 001.



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4. The Superintendent,
Central Prison-II, Puzhal,
Chennai – 600 006.

... 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 or person of the detinue, the petitioner's husband by name Sailesh Kumar Jain K, S/o. Shri Kishore Kumar Jain now detained in Central Prison, Puzhal, Chennai vide order of the Detention Order No.F.No.PD-12001/10/2023-COFEPOSA dated 20.12.2023 on the file of the 1st Respondent and call for the records in connection with the detention order No.F.No.PD-12001/10/2023-COFEPOSA dated 20.12.2023 on the file of the 1st Respondent and set aside the same and set the detinue/the petitioner's husband by name Sailesh Kumar Jain K, S/o.Shri Kishore Kumar Jain at liberty now detained in Central Prison, Puzhal, Chennai vide order of detention Order No.F.No.PD-12001/10/2023-COFEPOSA dated 20.12.2023 on the file of the 1st Respondent.

For Petitioner	: Mr.Adhitya Sathish
For R1 & R2	: Mr.R.Rajesh Vivekananthan, Deputy Solicitor General of India
For R4	: Mr.E.Raj Thilak, Additional Public Prosecutor
For R3	: No appearance



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ORDER

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

The petitioner herein, who is the wife of the detenu Shri Sailesh Kumar Jain K, S/o.Shri Kishore Kumar Jain, has come forward with this petition challenging the 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.



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4. In the instant case, the detenu was arrested on 20.10.2023 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. The issue as to whether the delay in passing the Detention Order has been properly explained, was clarified by perusing the original file of the Detention Proceedings. From the file, we can see that the arrest was made on 20.10.2023 and the detenu was remanded on 21.10.2023. Thereafter, the COFEPOSA proposal was submitted seeking for approval of the Principal Director General on 22.11.2023. There is no explanation at all for this delay between the date of arrest and the proposal being submitted for approval. Even after submission of the proposal, the same was forwarded to the Joint Secretary (COFEPOSA) CEIB on 28.11.2023 and the meeting of the Central Screening Committee for consideration of proposal was held on 08.12.2023 and finally, the Detention Order was passed on 20.12.2023. The delay in between these days also has not been appropriately addressed.



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6. 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 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



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case.”

7. 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.

8. 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.



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9.The learned counsel for the petitioner had produced copies of the order passed in HCP.No.473 of 2024 dated 29.04.2024, in which the Detention Order of the co-detenu was quashed by this Court. On this ground, the Detenu in the present case would be entitled for the relief sought for in the present Habeas Corpus Petition.

10. Accordingly, the detention order passed by the first respondent on 20.12.2023 in F.No.PD-12001/10/2023-COFEPOSA, is hereby set aside and the Habeas Corpus Petition is allowed. The detenu Shri Sailesh Kumar Jain K, S/o.Shri Kishore Kumar Jain, 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]

05.06.2024

Index: Yes/No

Internet:Yes/No

Neutral Citation: Yes/No

Tsg



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5. The Public Prosecutor,
High Court of Madras.



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