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HCP.No.1171 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.08.2024

CORAM :

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

AND

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

H.C.P.No.1171 of 2024

Moorthy

... Petitioner

Vs.

1. The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Fort St.George,
Chennai - 600 009.
2. The District Magistrate and District Collector,
Namakkal District,
Namakkal.
3. The Superintendent of Police,
Namakkal,
Namakkal District.
4. The Superintendent of Prison,
Central Prison - Salem,
Salem District.



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5. State represented by its
The Inspector of Police,
PEW Tiruchengode Police Station,
Namakkal District.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus, to call for the entire records, relating to the petitioner's son detention under Tamil Nadu Act 14 of 1982 vide detention order, dated 02.05.2024 on the file of the second respondent herein made in proceedings Memo C.M.P.No.17/Bootlegger/2024 [M1], quash the same as illegal and consequently direct the respondents herein to produce the petitioner's son namely Prakash, S/o. Moorthy, aged 33 years before this Hon'ble Court and set the petitioner's Son at liberty from detention, now the petitioner's Son detained at Central Prison, Salem.

For Petitioner : Mr.R.Sasikumar

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 passed by the District Magistrate/District Collector, Namakkal in proceedings No.C.M.P.No.17/Bootlegger/2024 [M1] dated 02.05.2024 is sought to be quashed in the present habeas corpus petition.



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The learned Counsel appearing on behalf of the petitioner would mainly contend that there was a delay in considering the representation submitted by the detainee under Act 14 of 1982.

3. Delay in considering the representation is vital, more specifically in preventive detention cases. The detention power conferred under Act is extremely powerful and that have the ability to confer arbitrary power to the State. In such circumstances, where there is a possibility of an unfettered discretion of power by the Government, the Court must analyse cases arising from such laws with extreme caution and excruciate detail power to ensure that there are check, and balances on the power of the Government. Every procedural rigidity must be followed in entirety by the Government in cases of preventive detention and every lapse in procedure must give raise to benefit to the cases of detainee. The Courts in such circumstances of preventive detention, are conferred with a duty that has been given the utmost importance by the Constitution of India, which is the protection of individual and civil liberties. Therefore, the adherence of the



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procedures and the Rules and the opportunities to be afforded to the detainee are of paramount importance and a constitutional mandate. Therefore, every lapse in exercising the power identified are to be viewed seriously.

4. High Court in exercise of powers of Judicial Review under Article 226 in the case of habeas corpus is not expected to assess the nature of the seriousness of the criminal cases registered and pending against the detainee. The cases of preventive detention are to be dealt with in accordance with the personal liberty of the detainee granted under Part-III of the constitution. Therefore, the dealing of preventive detention cases are not comparable with reference to the regular criminal cases. The cases under preventive detention stands in different footing than that of the regular criminal cases wherein the procedures are distinct and different. Thus, High Court is expected to exercise its powers meticulously to scrutinise, whether there is any lapses on the part of the detaining Authority and the power has been exercised judiciously by scrupulously following the procedures and application of mind has been made as required under law and the breach of public order likely to be caused by the detainee. It is held that mere law and



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order cannot be a ground to detain a person. The likelihood of causing disturbance to public order, which must be the subjective satisfaction of the detaining Authority while passing the order of detention.

5. Admittedly, in the present case, there is a delay of eight days in considering the representation and that is not disputed by the learned Additional Public Prosecutor. The delay in considering the representation undoubtedly caused infringement of the right of personal liberty of the detainee under Article 21 of the constitution of India. Thus, the order of detention do not stand under the scrutiny of law.

6. Accordingly, the impugned order of detention on the file of the second respondent in proceedings No.C.M.P.No.17/Bootlegger/2024 [M1] dated 02.05.2024 is quashed and the habeas corpus petition stands **allowed**.

[S.M.S., J.]

[V.S.G.,

J.]

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

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