



WEB COPY



HCP.No.1264 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.08.2024

CORAM :

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM
AND
THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

H.C.P.No.1264 of 2024

Kamarnisha

... Petitioner

Vs.

1. The Secretary to Government,
Home, Prohibition & Excise (XVI) Department,
Fort St.George, Secretariat,
Chennai 600 009.
2. The District Collector and District Magistrate,
Office of the District Collector and
District Magistrate, Cuddalore.
3. The Superintendent of Police,
Office of the Superintendent of Police,
Cuddalore.
4. The Superintendent of Prison,
Central Prison at Cuddalore -4.
5. The Inspector of Police,
Virudhachalam Police Station,
Cuddalore.

... 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 in detention order in No.C3/D.O/38/2024 dated 07.05.2024 on the file of the 2nd respondent and set aside the same and direct the respondents herein to produce the body of the son of the petitioner/detenu Mr.Mohammed Abdullah S/o.Mohammed Kasim aged 42 years now confined in Central Prison at Cuddalore before this Court and set him at liberty.

For Petitioner : M/s.R.Subadra devi
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 second respondent herein in proceedings No.C3/D.O/38/2024 dated 07.05.2024, is sought to be quashed in the present Habeas Corpus Petition.

2.The ground on which the order of preventive detention sought to be assailed is that the detenu was arrested on 07.05.2024 and the copy of the documents are served on the detenu after a lapse of five days, which is mandated



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under Section 8 (1) of Act 14 of 1982. Section 8 (1) contemplates that when a person is detained in pursuance of a detention order, the authority making the order shall, as soon as may be, but not later than five days from the date of detention, communicate to him, the grounds on which the order has been made and shall afford him an earliest opportunity of making a representation against the order to the State Government. The time limit contemplated under the statute is mandatory. The time period in the Act 14 of 1982 cannot be construed as directory, in view of the fact that it relates to personal liberty enshrined under Article 21 of the Constitution of India. Thus, the detaining authority is bound to comply with the time limit as contemplated under Section 8 (1) of the Act and the failure is to be taken as fatal.

3.In the present case, it is not disputed that the copy of the documents were served on the detainee after a lapse of five days which is violation of Section 8 (1) of the Act. Therefore, the petitioner is entitled to succeed.

4.Consequently, the impugned order of detention in proceedings No.C3/D.O/38/2024, dated 07.05.2024, is quashed and the Habeas Corpus Petition



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stands **allowed**. The detainee, namely, Mr.Mohammed Abdullah, S/o.Mohammed Kasim, aged 42 years, now confined in Central Prison, at Cuddalore, is directed to be set at liberty forthwith unless he is otherwise required in connection with any other case.

[S.M.S., J.]

[V.S.G., J.]

sli

08.08.2024

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

To

1. The Secretary to Government,
Home, Prohibition & Excise (XVI) Department,
Fort St.George, Secretariat, Chennai 600 009.
2. The District Collector and District Magistrate,
Office of the District Collector and District Magistrate, Cuddalore.
3. The Superintendent of Police,
Office of the Superintendent of Police, Cuddalore.
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Central Prison at Cuddalore -4.
5. The Inspector of Police,
Virudhachalam Police Station, Cuddalore.
6. The Public Prosecutor, High Court, Madras.



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