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HCP.No.1513 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.08.2024

CORAM :

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

**H.C.P.No.1513 of 2024**

Mahmooda Begum

... Petitioner

***Vs.***

- 1.The State of Tamil Nadu rep. By  
The Secretary to the Government of Tamilnadu,  
Public (SC) Department, Secretariat,  
Chennai-600 009.
- 2.The Secretary to the Government of Tamilnadu,  
Public Law & Order Department,  
Secretariat,  
Chennai-600 009.
- 3.The Union of India,  
rep by the Secretary to the Government of India,  
Ministry of Finance, Department of Revenue,  
(Cofeposa Unit),  
Central Economic Intelligence Bureau,  
Janpath Bhavan,  
B-Wing, 6th Floor, Janpath,  
New Delhi-110 001.



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4.The Superintendent of Prison,  
Central Prison-II,  
Puzhal,  
Chennai.

5.The Senior Intelligence Officer,  
Directorate of Revenue Intelligence,  
No.27, G.N.Chetty Road,  
T.Nagar,  
Chennai-600 017.

... Respondents

**PRAYER:** Petition filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus, to call for the relating to the petitioner's husband detention under COFEPOSA Act vide detention order in G.O.No.SR.I/72-9/2023 Public (SC) Department dated 10.10.2023 passed by the first respondent herein and quash the same as illegal and consequently direct the Respondents herein to produce the body of detenu Bakker Hussain S/o. Thiru.Ali Thambi aged 64 years now detained in the Central Prison-II Puzhal, Chennai as COFEPOSA detenu before this Court and set him at Liberty.

For Petitioner : Mr.B.Kumar, Senior Counsel  
for Mr.T.Sudhanraj

For Respondents : Mr.E.Raj Thilak  
Additional Public Prosecutor (for R1,2 &4)  
Mr.N.Ramesh, Spl. Public Prosecutor for ED



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## **ORDER**

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

The petitioner herein is the detenu viz., Bakker Hussain S/o. Thiru.Ali Thambi aged 64 years now detained in the Central Prison-II Puzhal, Chennai, has come forward with this petition challenging the detention order passed by the first respondent dated 10.10.2023 slapped on him, in exercise of the powers conferred under Section 3(1)(i) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (Central Act 52 of 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 10.05.2023 and thereafter, the detention order came to be passed on 10.10.2023. This fact is not disputed by the learned Additional Public Prosecutor.

5. Mr.E.Raj Thilak, learned Additional Public Prosecutor, by placing reliance on Paragraph 9 of the counter affidavit filed by the first respondent, submitted that the delay was predominately on the part of the Sponsoring Authority. He stated that as soon as the documents were received from the Sponsoring Authority on 30.08.2023, the detention order was passed on 10.10.2023.

6. Even assuming that there was a delay on the part of the sponsoring authority in sending the required documents to the first respondent, the last of such documents was received by the first respondent on 30.08.2023. However, the detention order came to be passed only on 10.10.2023. Therefore, there is an unexplained and inordinate delay of about 40 days in passing the detention order.

7. In the case of '*Sushanta Kumar Banik Vs. State of Tripura*', reported in



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'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 case.”*

8. Drawing inspiration from the judgment in **Sushanta Kumar Banik's**



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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.

9. 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.

10. Accordingly, the detention order passed by the first respondent in G.O.No.SR.I/72-9/2023 Public (SC) Department, dated 10.10.2023, is hereby set aside and the Habeas Corpus Petition is allowed. The detenu viz., Bakker Hussain S/o. Thiru.Ali Thambi aged 64 years now detained in the Central Prison-II Puzhal,



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Chennai, is directed to be set at liberty forthwith, unless his confinement is required in connection with any other case.

[S.M.S., J.]

[V.S.G., J.]

**13.08.2024**

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

- 1.The Secretary to the Government of Tamilnadu,  
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Chennai-600 009.
- 2.The Secretary to the Government of Tamilnadu,  
Public Law & Order Department,  
Secretariat,  
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**S.M.SUBRAMANIAM, J.**  
**AND**  
**V.SIVAGNANAM, J.**

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