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H.C.P.No.1656 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.08.2024

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

AND

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

H.C.P.No.1656 of 2024

Vinitha

... Petitioner

Vs.

- 1.The Secretary to the Government,
Home Prohibition and Excise Department,
Secretariat,
Chennai – 600 009.
- 2.District Collector and District Magistrate of
Viluppuram District,
Viluppuram.
- 3.The Superintendent of Police,
Viluppuram District,
Viluppuram.
- 4.The Superintendent of Prison,
Central Prison, Cuddalore.
- 5.The Inspector of Police,
Gingee PEW Police Station,
Viluppuram District.

... Respondents



H.C.P.No.1656 of 2024

Prayer: Habeas Corpus Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Habeas Corpus, to call for the records in connection with the order of Detention passed by the 2nd respondent dated 03.07.2024 in Rc.No.C2/27/2024 against the petitioner husband Selvam, male aged 30 years S/o. Perumal, who is confined at Central Prison, Cuddalore and set aside the same and direct the respondents to produce the detenue before the Court and set him at liberty.

For Petitioner : Mr.D.Balaji

For Respondents : Mr.E.Raj Thilak
Additional Public Prosecutor

ORDER

[Order of the Court was made by **S.M.SUBRAMANIAM, J.**]

The petitioner herein is the father of the detenu viz., Selvam, S/o. Perumal, aged 30 years, now confined at Central Prison, Cuddalore, has come forward with this Habeas Corpus Petition challenging the detention order passed by the 2nd respondent in Rc.No.C2/27/2024 dated 03.07.2024.

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



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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 01.06.2024 and thereafter, the detention order came to be passed on 03.07.2024. This fact is not disputed by the learned Additional Public Prosecutor.

5. In the case of *Sushanta Kumar Banik vs. State of Tripura*¹, 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

¹ [2022 LiveLaw (SC) 813]



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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 Banik's case***, a co-ordinate Bench of this Court in the case of ***Gomathi vs. Principal Secretary to Government and Others***², 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.

² [2023 SCC OnLine Mad 6332]



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7. In yet another case i.e., in *Nagaraj vs. State of Tamil Nadu*³, 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. Accordingly, the detention order passed by the 2nd respondent in Rc.No.C2/27/2024 dated 03.07.2024, is hereby set aside and the Habeas Corpus Petition is allowed. The detenu viz., Selvam, S/o. Perumal, aged 30 years, now confined at Central Prison, Cuddalore, 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.]
27.08.2024

Jeni
Index : Yes
Speaking order
Neutral Citation : Yes

³ [(2018) 3 MWN (Cri) 428]



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To

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Home Prohibition and Excise Department,
Secretariat,
Chennai – 600 009.
- 2.The District Collector and District Magistrate of
Viluppuram District,
Viluppuram.
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- 6.The Public Prosecutor,
Madras High Court.



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and
V.SIVAGNANAM, J.

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