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H.C.P.No.1723 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

**DATED : 22.08.2024**

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**THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM**

**AND**

**THE HONOURABLE MR.JUSTICE V.SIVAGNANAM**

**H.C.P.No.1723 of 2024**

Petchi

... Petitioner

Vs.

1.The Secretary to the Government,  
Home Prohibition and Excise Department,  
Secretariat,  
Chennai – 600 009.

2.Office of the Commissioner of Police  
/ Detaining Authority,  
Tiruppur City,  
Tiruppur District.

3.The Superintendent,  
Central Prison,  
Coimbatore.

4.State Represented by  
The Inspector of Police,  
Thirumuruganpoondi Police Station,  
Tiruppur District.

... Respondents



H.C.P.No.1723 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 2<sup>nd</sup> respondent dated 08.05.2024 in C.No.36/G/IS/TIRUPPUR City/2024 against the petitioner son GAWASKAR @ GAWASKI, M/38 Years, Son of Annadurai, who is confined at Central Prison, Coimbatore and set aside the same and consequently direct the respondents to produce the detenue before the Court and set him at liberty.

For Petitioner : Mr.A.Saranraj

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 mother of the detenu viz., Gawaskar @ Gawaski, Male aged 38 Years, Son of Annadurai, now confined at Central Prison, Coimbatore, has come forward with this Habeas Corpus Petition challenging the detention order passed by the 2<sup>nd</sup> respondent in C.No.36/G/IS/TIRUPPUR City/2024 dated 08.05.2024.



H.C.P.No.1723 of 2024

2. The two adverse cases of the year 2023 has been relied on for the purpose of detaining the detenu under Act 14 of 1982.

3. The Detaining Authority furnished the reasons stating that the detenu has been lodged at Central Prison, Coimbatore as a remand prisoner in Crime No.142 of 2024 and he has not moved bail in any Court so far. Even in the absence of bail application, the Detaining Authority formed an opinion that there is real possibility of coming out on bail in the future in the above case by filing bail application before the Court concerned.

4. Such futuristic presumption of the Detaining Authority must have certain link or proximity and in the absence of any such proximity, the Court has to draw an inference. The Detaining Authority has failed to consider the relevant material available on record for the purpose of invoking act 14 of 1982. Preventive measures can be taken only in the presence of concrete materials and the presumptions based on certain remote instances or old cases would be insufficient for the purpose of branding a person as “Goonda”.

5. In the present case, though the learned Additional Public Prosecutor



H.C.P.No.1723 of 2024

states that several other cases are pending. Those cases were registered in the year 2010, 2011, 2014 and 2018, which shall have no proximity with the detention order passed in the year 2024.

6. In such circumstances, the Police Authorities is at liberty to move application for cancellation of bail in the event of grant of bail by the Courts. In alternate, they can seek to impose stringent conditions and enhance surveillance of such accused persons, so as to prevent them from committing offences frequently.

7. Instead of initiating all appropriate alternate measures, the authorities cannot invoke preventive detention law in a casual manner merely on the ground that there is a likelihood of causing breach of public order. The breach of public order has to be established with the relevant materials and in the absence, Court has no option but to interfere.

8. 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.



9. In the instant case, the detenu was arrested on 08.03.2024 and thereafter, the detention order came to be passed on 08.05.2024. This fact is not disputed by the learned Additional Public Prosecutor.

10. In the case of ***Sushanta Kumar Banik vs. State of Tripura***<sup>1</sup>, 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*

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<sup>1</sup> [2022 LiveLaw (SC) 813]



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H.C.P.No.1723 of 2024

*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.”*

11. 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***<sup>2</sup>, 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.

12. In yet another case i.e., in ***Nagaraj vs. State of Tamil Nadu***<sup>3</sup>, 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

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<sup>2</sup> [2023 SCC OnLine Mad 6332]

<sup>3</sup> [(2018) 3 MWN (Cri) 428]



H.C.P.No.1723 of 2024

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.

13. Accordingly, the detention order passed by the 2<sup>nd</sup> respondent in C.No.36/G/IS/TIRUPPUR City/2024 dated 08.05.2024, is hereby set aside and the Habeas Corpus Petition is allowed. The detenu viz., Gawaskar @ Gawaski, Male aged 38 Years, Son of Annadurai, now confined at Central Prison, Coimbatore, 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.]  
22.08.2024

Jeni  
Index : Yes  
Speaking order  
Neutral Citation : Yes



H.C.P.No.1723 of 2024

To

WEB COPY

- 1.The Secretary to the Government,  
Home Prohibition and Excise Department,  
Secretariat,  
Chennai – 600 009.
- 2.The Office of the Commissioner of Police  
/ Detaining Authority,  
Tiruppur City,  
Tiruppur District.
- 3.The Superintendent,  
Central Prison,  
Coimbatore.
- 4.The Inspector of Police,  
State,  
Thirumuruganpoondi Police Station,  
Tiruppur District.
- 5.The Public Prosecutor,  
Madras High Court.



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H.C.P.No.1723 of 2024

**S.M.SUBRAMANIAM, J.**  
**and**  
**V.SIVAGNANAM, J.**

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